

FINANCIAL SERVICES AND GENERAL
GOVERNMENT APPROPRIATIONS FOR 2019

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2019

TUESDAY, MARCH 6, 2018.

UNITED STATES DEPARTMENT OF THE TREASURY

WITNESS

HON. STEVEN T. MNUCHIN, SECRETARY, UNITED STATES DEPARTMENT OF THE TREASURY

Mr. GRAVES. Good morning, Mr. Secretary.

Secretary MNUCHIN. Good morning.

Mr. GRAVES. Thank you for joining us. We welcome you today to this hearing and look forward to hearing from you and discussing the Department's budget request that I know you have taken a lot of time to prepare, as well as some of the economic assumptions in the policies, including the President's overall request for the fiscal year of 2019.

Before we get into the details of your budget request, I would like to just take a quick moment to look back over this past year, because 2017 has been a year of accomplishments, great accomplishments, and that couldn't have happened without the support and the leadership of the President and the administration, including yourself, Mr. Secretary, and we want to thank you for that. Because after years of high unemployment and stagnant wages, hard-working Americans finally saw the economy start booming again in 2017. Unemployment is now at a 17-year low. Almost 2 million new jobs were created in the last 13 months, and for us, that means 2 million of our constituents today are working that weren't working as of January in 2017.

Wages are growing at nearly 3 percent, and according to the Department of Labor, this is the fastest growth in almost a decade. Manufacturing expanded in January at nearly the fastest pace since 2004, and small business optimism is at its highest level since Ronald Reagan was President. And this just didn't happen by accident. It happened because Congress and the administration worked together to reform the Tax Code for the first time in more than three decades. It happened because we slashed nearly 1,500 unnecessary rules and regulations, lightening the load of small businesses all across this country, and it happened because we freed businesses, both big and small, to grow and to thrive once again.

So, Secretary Mnuchin, I know you played an important part in this success, so I just want to say thank you. Thank you for your hard work and for your commitment to making America reach these milestones that we have now seen over 2017.

But now on to your budget request. As you look ahead, we know that your next year's request for the IRS is at \$11.5 billion, which includes program integrity cap adjustments of \$362 million. In addition to this request, the IRS is seeking another \$397 million to implement the Tax Cuts & Jobs Act over the next 2 fiscal years.

Now this request includes \$159 million for the Office of Terrorism and Financial Intelligence. And this is a \$36 million increase from last year. This office has the dual purpose of safeguarding our financial system against illicit use and protecting our citizens from national security threats. And today, there is no problem more urgent than the serious threat posed by North Korea.

The Treasury's budget is proposing \$15 million in 2019 to isolate North Korea's regime, in addition to the supplemental request of \$15.5 million for 2018. Now, this funding will allow Treasury to hire additional intelligence analysts and maximize economic pressure against North Korea and its enablers, so we will look forward to hearing more about that as you give your testimony later.

The Secretary's budget today also proposes \$17.5 million to support a terrorism financing targeting center in Saudi Arabia, which is a collaboration with the six Gulf Cooperation Council countries, and counters the financing of terrorism. This funding is in addition to the \$9.5 million request in this year's supplemental.

Now, I am curious to learn how Treasury plans to use this funding and carry out these initiatives, and I know you have a plan for that, and we would like to hear that today. Another important topic to me and this administration is cybersecurity. Your budget includes \$25 million for Treasury wide cybersecurity investments. This account was established in our most recent government funding bill to strengthen Treasury's cybersecurity posture, and mitigate threats to the U.S. financial infrastructure. Cybersecurity is of critical importance to our national security, and I hope to hear from you today, Mr. Secretary, on how the Treasury is going to use these resources that were recently provided to protect against and to respond quickly to some of the cyber threats that you see and we face as a Nation.

But before wrapping up my opening remarks here, I want to take a moment to commend the Senate Banking Committee and their chairman, Mike Crapo, for his bipartisan efforts to move the Economic Growth Regulatory Relief and Consumer Protection Act, which is a major regulatory reform bill.

And as you know, our Financial Services Appropriations bill last year included many of these similar provisions that the Senate is now moving through their body.

So I am curious to hear your thoughts on the Senate package and how that compares to what we have passed as a committee, as well, and for your thoughts on its potential for a final passage, and should we include some of those provisions in our 2018 final bill here that we are working through the House.

So, Secretary Mnuchin, thank you again. Thank you for your good work over the last year. Thank you for joining us today and taking time to share with us about your budget request, and we will all look forward to hearing from your testimony in a moment. And now, let me turn to my ranking member here, Mr. Quigley, from Illinois, for any remarks he may have.

Mr. QUIGLEY. Thank you, Mr. Chairman. I look forward to working with you over the upcoming fiscal year 2019 appropriations season, and anticipate additional spirited discussions as we begin our hearing. Also, I would like to welcome the Treasury Secretary back to our committee. As I have said in the past, the vital role that the Treasury Department plays in both the domestic and global economy cannot be overstated. Not only do you and your Department oversee the Federal Government's ability to collect trillions in revenue and finance government operations, but you are also charged with investigating and protecting our financial system from the illicit and criminal activities, as well as carrying out sanctions used to deter hostile actions from foreign actors.

But again, this year, the Treasury budget request before us would slash various programs that will help us—will make us less effective, less efficient and more vulnerable to outside risk. After almost a decade of cuts nearing \$1 billion, leading to a loss of more than 17,000 employees, the IRS would suffer a \$100 million reduction in this request. In order to meet this new funding level, the IRS would need to reduce staffing further by 6,000. These cutbacks would come from critical areas such as taxpayer services enforcement.

It is hard to imagine why this administration would want to weaken the IRS and give taxpayers less resources right after passing a complex tax bill. After strong bipartisan support from Congress, I was also deeply troubled by the administration's refusal to back off its request to eliminate the Community Development Financial Institution Fund.

CDFI plays a vital role in spurring both economic growth and revitalization in our most underserved and neglected communities. There are numerous other cuts to the Department that are harmful as well, including questionable reductions to cybersecurity enhancement at a time when hacking and identity theft are at an all-time high, and a premature 57 percent cut to the Special Inspector General for TARP, which is still charged with auditing the \$38 billion in open TARP programs that will last until 2023.

But I also want to quickly highlight one area, in particular, that I find concerning. Under the Terrorism From Financial Intelligence Program only four additional employees are budgeted for Russia-related sanction activities. That compares to 69 additional employees budgeted for North Korean activities. While I strongly agree that we must take seriously the North Korean threat to our national security, and provide TFI with the necessary tools to counter North Korean aggression, when placed side by side with a request for Russian activities, the obvious lack of urgency is quite stark.

Taken together with other actions, or lack thereof, from the Treasury Department on the Russian threat, it shows an administration that does not prioritize the security of our elections, or punishing those who wish to harm our democracy. I look forward to discussing these and other issues with you today. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley, and now I would like to take the opportunity to recognize the chairman of the full committee, Mr. Frelinghuysen, with any opening remarks, and thank

you for your great service. This may be your last time visiting with Mr. Mnuchin in a committee hearing.

The CHAIRMAN. Perhaps in a hearing, but perhaps in another venue, as well. Thank you, Mr. Chairman, for the time. I also want to thank Secretary Mnuchin for appearing before your committee. Again, we look forward to your testimony in hearing your frank and candid views on a wide number of issues.

As I say at every hearing, the power of the purse lies in this building. It is the constitutional duty of Congress to make spending decisions on the dollars you collect on behalf of the people we represent at home. We try to do our best in that regard. We intend to adequately fund important programs, including yours, while working to reduce and eliminate waste and duplication. With these priorities in mind, the committee and the full committee and the full House of Representatives passed the Fiscal Year 2018 Financial Services and General Government Appropriations bill last September. We continue to work with the Senate, our Senate colleagues to finish those bills, and to send a bill to the President for his signature.

And I look forward, while she is not here, to continuing my work with our ranking member, Mrs. Lowey, and certainly with Mr. Quigley, to rapidly move the fiscal year 2019 Appropriations bill forward, as well.

I have long held, and I believe it is even more important now than ever before, we cannot take a step back from our responsibilities on the world stage. Like the chairman, I was pleased to read in your request a proposed increase in funding for the Office of Terrorism and Financial Intelligence and their activities to protect the U.S. and international financial systems, along with countering networks that support terrorists and rogue regimes.

As we face increased threats from North Korea, Iran, and Russia, it is imperative we have the tools to respond to their aggression with maximum economic pressure. As you well know, Mr. Secretary, the United States and our allies around the globe are facing constant pressure from China and its expanding sphere of influence. While I note your Department's recent actions against a Chinese bank facilitating North Korean money laundering and sanctions evasion, I would like to hear, and I think all of us would this morning, how the Department is positioned to respond to China's every attempt to subvert and weaken our financial system.

I have been doing some travelling lately, and have familiarized myself with the One Belt, One Road. It is not only a physical development that should alarm us, but they are also snagging a lot of different countries and putting them in a position which makes them beholden to the Chinese leadership, and I think that should be of concern to us. Of course, as a debtor nation, we should be mindful that a lot of those nations in Southeast Asia and around the world now find themselves in debt to the Chinese, and that debt is a political debt as well as a financial debt. But we look forward to hearing your testimony and thank you for the good work you have been doing on behalf of our Nation. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Chairman, and thanks for your leadership in getting this bill and all 11 others through the House

last year. And hearing your call, we are glad to have with us the ranking member of the full committee Mrs. Lowey with us, and I recognize you for any opening remarks you may have.

Mrs. LOWEY. Thank you, Mr. Chairman. I would like to thank Chairman Graves and Ranking Member Quigley for holding this hearing, and Secretary Mnuchin, welcome. Thank you for being here this morning.

Mr. Secretary, your fiscal year 2019 budget request, as you know, I am sure you know, would harm taxpayers by slashing IRS funding by \$100 million, and stall Federal investments in economic development by eliminating all discretionary grant programs in the Community Development Financial Institutions Fund.

Under your budget, the IRS would not have enough manpower to catch bad actors, ranging from those who cheat on their taxes to those who perpetuate identity theft scams that prey on the elderly and nonnative English speaking populations. It is not just enforcement that we need to be concerned about, it is also taxpayer services.

In her 2017 annual report to Congress, taxpayer advocate Nina Olson identified the IRS limited telephone service as one of the most serious problems facing taxpayers. She wrote, "Because of the IRS' archaic telephone technology and operations, taxpayers face long wait times with the worry that the IRS's telephone assisters will not be able to answer their questions if they are able to get through," yet your budget cuts the IRS by \$100 million.

This is all the more important as the Republican tax scam, which was rushed into law last year that has created a great deal of confusion, taxpayers are turning to the IRS for clarity, and just not getting it. This has been a particular issue in high cost-of-living areas, like New York. When you testified before this committee last year, I made clear how unwelcome any reductions to the State and local tax deductions would be in tax reform. Less than a year later, a deduction that 45 percent of my constituents take at an average of \$26,000 has been slashed beyond recognition. I am sure you are aware of that. I think you are still a New Yorker, so I am sure you are aware of it, and I am sure you hear this from your friends and neighbors.

The impact of this scam is so disastrous that I have called on the IRS to accept prepayments of 2018 State and local taxes that many New Yorkers made in 2017. At least 17,000 taxpayers paid some portion of their 2018 taxes in advance at an estimated \$51 million. I hope that you and the IRS will at least give this break to families that will be hurt by the new tax policy for years to come. But quite frankly, I am concerned that your proposed budget cuts will make it harder for the IRS to assist my constituents.

Let me be clear, capping the SALT deduction at \$10,000 targets residents of high cost States, like New York and California, which you know all too well. In 2015 alone, New York sent \$48 billion more in taxes than it received. Senator Moynihan, the late Senator Moynihan, stressed that over and over again. Simply put, the new tax law is a scam that unfairly takes money from the pockets of hard-working families living in States that send more money to the Federal Government than we get back in Federal investment.

One bright spot of your budget is the increase for the Office of Terrorism and Financial Intelligence of \$36 million. This is an essential number, and an essential service, and I look forward to working with you. This is essential to combating terrorist financing, and other national security threats, and I am really pleased it is included.

Mr. Secretary, I trust that you are aware of just how influential your position is, and I am disappointed by some of the distractions surrounding your tenure. It is my hope that going forward, you will respect the taxpayers I represent in New York by acting as a good steward of their dollars, both in policies you implement, and your actual use of them. I look forward to a productive discussion this afternoon, and to working to serve the best interests of the American taxpayer. Thank you for appearing before us.

Mr. GRAVES. Thank you, Mrs. Lowey. Mr. Secretary, thanks again for joining us, and now we welcome any opening statement you may have, and as you can imagine there will be a few questions following that from each of the members here, but thank you again, and we look forward to hearing from you.

Secretary MNUCHIN. Good. Thank you very much. Chairman Graves, Ranking Member Quigley, and members of this subcommittee, it is good to be here with you today to discuss the President's budget and the priorities for the Treasury Department. Today, I would like to highlight the administration's priorities of protecting America's financial system and national security in implementing the historic Tax Cuts & Jobs Act.

The President's 2019 budget request increased resources for the Office of Terrorism and Financial Intelligence and the Financial Crimes Enforcement Network. This will be used to economically isolate rogue regimes in North Korea and fund the new terrorist financing targeting center in Saudi Arabia.

It will allow us to implement the Countering America's Adversaries Through Sanctions Act, including funding for our Russia and Iran programs, and counter illicit financial networks. We are aggressively targeting terrorist organizations, transnational crime organizations, proliferators of weapons of mass destruction, and other threats.

As the importance of our economic tools continue to escalate, we need additional funding to enhance the administration's efforts and implement congressional priorities. This budget also provides for Treasury-wide cybersecurity protection. As I previously noted before this subcommittee, protecting both Treasury and the financial system from cyber attacks is critical for our Nation's financial stability. These attacks not only have the potential to affect financial markets and the broader economy, they implicate our national security as well.

In particular, I want to highlight this Cybersecurity Enhancement Account. This initiative makes proactive and strategic investments in enterprise-wide cybersecurity capabilities. These capabilities will ensure the Treasury is better prepared to defend against cyber attacks, and respond appropriately when such attacks occur.

I would also like to highlight two of the administration's priorities for the 2018 Appropriations bill. The Tax Cut & Jobs Act included hundreds of provisions that will provide tax cuts for middle

income families and make American business more competitive. Implementing the tax law will require a great deal of work in 2018 and 2019. Accordingly, the IRS will need \$397 million in order to carry out this critical mandate. The administration is also requesting \$25 million above the President's 2018 budget for TFI to fund the Terrorist Financing Targeting Center and to immediately deploy additional resources to counter posed threats by North Korea.

Mr. Quigley, let me just comment on one of the things that you raised in your opening statement, which was the allocation between Russia and North Korea money in the request. Let me acknowledge that I was very, very involved in the top line request for the money. I always think of this as we have the ability to move these resources around, so I just want to comment that the allocation that is in the proposed budget is an oversight; it does not reflect my current thinking of the resources we would put in towards Russia, and at the time that this was raised to me, we had already printed this, so I want to acknowledge what you have said.

The policies in the President's budget will foster economic growth, set our country on a sound fiscal path in the long-term, and carry out the administration's commitment to protecting national security of the United States.

Thank you very much.

[The information follows:]

**Statement of
Steven T. Mnuchin
Secretary
United States Department of the Treasury
before the
Committee on Appropriations
Subcommittee on Financial Services & General Government
United States House of Representatives
March 6, 2018**

Chairman Graves, Ranking Member Quigley, and members of the subcommittee, it is good to be here with you today to discuss the President's Budget and the priorities of the Treasury Department.

Today I would like to highlight the Administration's priorities of protecting America's financial system and national security and implementing the historic *Tax Cuts & Jobs Act*.

The President's FY2019 budget requests increased resources for the Office of Terrorism and Financial Intelligence (TFI) and the Financial Crimes Enforcement Network. This will be used to economically isolate the rogue regime in North Korea and fund the new Terrorist Financing Targeting Center (TFTC) in Saudi Arabia. It will also allow us to implement the Countering America's Adversaries Through Sanctions Act, including funding for our Russia and Iran programs, and counter illicit financial networks. We are aggressively targeting terrorist organizations, transnational crime organizations, proliferators of weapons of mass destruction, and other threats. As the importance of our economic tools continues to escalate, we need additional funding to enhance Administration efforts and implement Congressional priorities.

This budget also provides for Treasury-wide cybersecurity protections. As I have previously noted before this subcommittee, protecting both Treasury and the financial system from cyber attacks is critical for our nation's financial stability.

These attacks not only have the potential to affect financial markets and the broader economy, they implicate our national security as well.

In particular, I want to highlight the Cybersecurity Enhancement Account. This initiative makes proactive and strategic investments in enterprise-wide cybersecurity capabilities. These capabilities will ensure that Treasury is better prepared to defend against cyber attacks and respond appropriately when such attacks occur.

I would also like to point to two Administration priorities for the 2018 appropriations bill. The *Tax Cuts & Jobs Act* included hundreds of provisions that will provide tax cuts for middle-income families and make American businesses more competitive. Implementing the law will require a great deal of work in 2018 and 2019. Accordingly, the IRS will need \$397 million in order to carry out this critical mandate. The Administration is also requesting \$25 million above the President's FY2018 budget for TFI to fund the TFTC and to immediately deploy additional resources to counter threats posed by North Korea.

The policies in the President's Budget will foster economic growth, set our country on a sound fiscal path in the long term, and carry out the Administration's commitment to protecting the national security of the United States.

Thank you very much.

Mr. GRAVES. Well, thank you, Mr. Secretary, and if you could, for a moment, just, I am going to just ask one or two questions as it relates to tax reform and the positive impacts that you see. We have heard today that there is a lot of concern about the impacts on the IRS. Could you address the impacts of tax reform on the average American and small businesses, and the positive impacts that you have noticed so far and what you expect to see in the days ahead?

Secretary MNUCHIN. Well, as you know, we are early in the process of implementing this, but I think we have been very pleased with the reaction so far. Our first priority was to make sure that the withholding tables were updated to reflect many middle class Americans getting tax cuts so that they saw that in their paychecks in February.

We have also now released a withholding tax calculator to allow taxpayers to actually check the calculations themselves. We are also very pleased by close to 400 companies that have announced one-time bonuses or raises, so we are very pleased with what has gone on so far, but there is a lot of work at the IRS to implement this.

Mr. GRAVES. As far as the impact on the average American family, there have been a lot of numbers thrown around as to the average family could expect to see more resources at home or in their paycheck as a result of tax reform. What is your latest figure that the average family can expect this year as a result of the passage and signing of this bill?

Secretary MNUCHIN. Sure. So the average family will see a direct reflect of a few thousand dollars, and on top of that, we expect over time that wages will increase close to \$4,000. So it is quite a significant impact.

Mr. GRAVES. And then as far as small businesses?

Secretary MNUCHIN. Small businesses now have the lowest tax rates since the 1930s. In particular, the ability for them to automatically expense capital investment we are already seeing the impact on that in the growth in that sector.

Mr. GRAVES. That is great. Thank you. Thank you for your work on that. And now I would like to turn to Mr. Quigley for any questions he may have.

Mr. QUIGLEY. Thank you, Mr. Chairman. Mr. Secretary, last August we passed a pretty strong law in response to the Russian interference in our elections. This administration is refusing to follow through on its implementation, claiming the passage of the law itself is enough to deter businesses from dealing with Russia. Probably not. Regardless of how the President personally feels about the sanctions, or the fight he put up toward its passage, he signed them into law, and is obligated to act.

By doing nothing, the President is effectively telling the world that there are no consequences for attacking our democratic process. I am a member of the Intel Committee as well, and I was there when Mr. Comey said "the Russians will be back." At this point we are not prepared, and we are sending a message to them that it was OK. So the only piece of the sanctions bill that is being completed is, frankly, a laughable report on Russian oligarchs not nearly enough.

So will this administration fully implement the Russian sanctions mandated by Congress?

Secretary MNUCHIN. Mr. Quigley, as I have testified before, I fully assure you that we will implement them. Last week, I gave the Senate a classified briefing on the report and where we are on sanctions. I would be more than happy to meet with members of the House to also do a classified briefing. There is an enormous amount of work that has gone into the report, the classified version with the intel community. As I have said, I expect, in the next several weeks, we will be moving forward with sanctions on Russia as a result of the act, so I can assure you that both in my discussions with the President, he is fully supportive of the work we are doing, and we have a large team working on it as we speak.

Mr. QUIGLEY. So the sanctions from the entire bill will be enforced?

Secretary MNUCHIN. Absolutely.

Mr. QUIGLEY. So is this, in your mind, contra to the President saying that we don't need to do this? I mean, I read you the quote. Has he changed his mind?

Secretary MNUCHIN. Again, I can tell you in recent conversations with the President, he is fully supportive of the work we are doing. As I said, there will be sanctions that come out. The Treasury Department is responsible for the sanctions on the political figures and the oligarchs. We are working with the State Department on the sanctions as it relates to other areas of industry.

Mr. QUIGLEY. Understand our confusion. The President at different times has said this is a hoax. It may not have been the Russians, it could have been a big guy in Jersey that did this. He has also said we are not going to enforce this. So, now, instead of the President announcing this, we have you, in a classified setting, telling people, Oh, we are, and today announcing that we are. So you can understand why we would question this and wonder. And why does it have to be a classified setting as to the fact that there are going to be sanctions, and why can't the President make that announcement?

Secretary MNUCHIN. Again, I have said in multiple unclassified settings, including today, including at the White House press room that sanctions are coming. Again, I am happy to explain the process. There is an enormous amount of work that goes into building each one of these packages from intel work to legal work. As I have said, the President is completely supportive of us moving forward with this.

Mr. QUIGLEY. You can also understand our concern when the numbers I brought out that you—and I appreciate your addressing them saying that the disparate number of resources based on targeted toward North Korea versus Iran, I took that to mean that you were going to look at that and make it right, for lack of a better word.

Secretary MNUCHIN. I added that into my opening statement because I wanted to acknowledge that that does not reflect my view of the relative resources, and as I have said, I always look at—we have a number of resources in TFI, and we actively move them around. So it is the same people that work on Russia, Venezuela, North Korea, and Iran. We constantly reprioritize, so the relative

number that was put into the budget does not reflect my current thinking of the allocation.

Mr. QUIGLEY. And at some point, can you tell us the resources that you are going to spend on North Korea, Iran, Russia, Venezuela and all the other countries that we are concerned about? And Russia, in previous sanctions, as it relates to Ukraine?

Secretary MNUCHIN. Again, we had a very large amount of sanctions on Russia that we did last year that we did under our Ukrainian authorities. We will continue to use those authorities, as well as the new authorities, and, again, I can assure you the reason why we want more resources at TFI is because we firmly believe, and the President believes, that sanctions do work. We have seen this in North Korea. There is no question in my mind, a big part of the reason why they are coming to the table now and talking about negotiating is because our sanctions have had significant economic impact on their economy.

Mr. QUIGLEY. And I appreciate this dialogue, and, Mr. Chairman, I look forward to perhaps having a discussion where we can go into more details, because I went to Cyprus for a reason. There is a reason the Russians are laundering money there, and if folks can launder money and get around our futile efforts and lack of resources to look at it, it is not just what the Russians did, it is the real threat from Iran, from North Korea, as you know, counterterrorism because if they can get around sanctions by money laundering, we are much, much less safe. Thank you, Mr. Chairman.

Secretary MNUCHIN. I agree with you, Mr. Quigley.

Mr. GRAVES. Mr. Yoder, and then Mr. Cartwright.

Mr. YODER. Thank you, Mr. Chairman. Mr. Secretary, welcome to the committee. I want to associate my remarks with those of the chairman related to the value of tax reform and its impact on constituents in our districts. Over the last few weeks, like many of my colleagues, I have been going around my community meeting with small businesses, talking to workers from, you know, blue-collar workers and checkout clerks at places like Home Depot or Walmart, you know, real Americans that are working hourly jobs who are talking about the bonuses they received, or the greater withholding in their—less withholding in their paycheck that they are getting a bigger paycheck, I guess.

We have also seen the bonuses, salary boosts, benefits like family leave that some companies are adding, so, you know, workers are really benefiting from the tax reform. And I think they are really surprised that Washington actually did something to help them. They are used to Washington putting a greater burden on them, a greater regulation, a higher tax, and so the fact that we rolled that back and it really impacted a lot of middle class working class families, I think, has been a surprise, particularly with the media disinformation that occurred throughout all of that, so thank you for your work to implement that. My own district we think about the third district of Kansas, a typical family will be receiving a \$2,728 tax cut this year.

Now the President's budget request projects around 3 percent economic growth per year over the next decade. The goal, the Tax Cuts & Jobs Act, along with other elements of our progrowth agenda was to help to get to that number.

What does that 3 percent do to the economy? What does it do to unemployment and job growth? How does it help families at home? And are we on track to hit that and are there other policy areas that Congress needs to address to get to 3 percent or more growth per year?

Secretary MNUCHIN. Well, thank you. We do think we are on track to meet that. We have had two quarters of over 3 percent growth. There is still some work to get to the long-term impact, because we want 3 percent or higher sustained economic growth. That will add trillions of dollars to the government, and tens of trillions of dollars to the economy. It is a combination of tax reform, regulatory relief, and trade negotiations, so that is a major focus of ours. As I said, we are pleased with the initial results.

Mr. YODER. Thank you, and I appreciate you bringing up trade, because I would like to ask you a little bit about the tariffs discussion that is happening and the recent policies that the administration has announced. You know, in Kansas, many of my constituents, many of our businesses rely on trade and exports. Over 400,000 jobs in Kansas are supported by trade, \$17 billion in annual exports to help boost our economy. And many of my constituents, many of our local businesses, many of our farmers believe that tariffs and the potential trade wars that could result could inevitably create big challenges for Kansas workers and farmers.

Tariffs on steel and aluminum, for example, are going to negatively impact Kansans who work in manufacturing. I have got a GM plant in my district with 2,200 people employed, and retaliation from our trading partners will also end up hurting Kansas farmers and ranchers who are already struggling as they try to export wheat, beef, and other agricultural products around the world.

I am concerned that after everything we have done to help our constituents through tax reform, that tariffs that the President recently announced are going to undermine some of these recent gains. Do you share any of these concerns about the impact of these tariffs, and do you believe that these tariffs will make American businesses more competitive on the global market?

Secretary MNUCHIN. So first let me just say, I have participated, and we meet on a weekly basis on trade on our economic team. These things are discussed very carefully, and we are trying to balance different issues. The President is personally involved in these decisions. I think on the steel and aluminum tariffs, we are trying to balance protecting these industries, which are very important, with making sure that we don't do undue harm to the economy.

So as the President just announced, Canada is a very significant partner that buys steel and sells steel. To the extent that we are successful in renegotiating NAFTA, those tariffs will not apply to Mexico and Canada, but we look forward to the President releasing the specific details and working with other people. We are not looking to get into trade wars. We are looking to make sure that U.S. companies can compete fairly around the world.

Mr. YODER. Well, and that brings to mind the separate trade dispute over Chinese washing machines and solar panels. We are already seeing retaliation on our sorghum producers in Kansas. Kansas sorghum, our farmers produce over half of the U.S.'s sorghum supply, so this Chinese retaliatory action poses a direct threat to

their livelihood at a time when commodity prices are already very low.

So this indicates to me, in a very real-world example, that the tariffs on those washing machines and solar panels actually led to a retaliation at the detriment of American farmers, constituents of the President and mine. Is the President aware, and are you aware, Mr. Secretary, that these retaliatory measures are already occurring, and is he aware of the potential for retaliatory impact to Kansas farmers, should other countries retaliate because of the new tariffs on steel and aluminum?

Secretary MNUCHIN. Well, as it has been reported in the press, I and Director Cohn, Ambassador Lighthizer met with Liu He last week, who is now our primary counterpart and an adviser to President Xi on trade issues. We had very direct discussions. The Chinese understand and agree that the objective is to lower the trade deficit. This is something that the President is very focused on. I think the good news is that President Xi and President Trump have a very close relationship and communicate regularly on these issues, but President Trump has been very clear. We want to make sure that U.S. companies have the same ability to do business in China as Chinese companies have here.

Mr. YODER. Thank you, Mr. Chairman. Thank you, Mr. Secretary.

Mr. GRAVES. Mr. Cartwright, and then Mr. Stewart.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. Thank you for being with us, Mr. Secretary. I want to follow up the discussion on trade a little bit. You have indicated recently the administration is considering reentering negotiations on the Trans-Pacific Partnership, and I do have a lot of constituents in my district in northeastern Pennsylvania who were seriously harmed from the impact of trade agreements like NAFTA. If the administration plans to go back into TPP talks, what specifically are you going to do to ensure that American workers come out as winners from any new trade pact? Specifically, will you fight to protect improved labor and environmental standards from the other trading countries with actual enforcement mechanisms?

Secretary MNUCHIN. So let me just comment that, you know, our priority at the moment is to renegotiate NAFTA and to focus on our trade relationship with China and have fair and balanced trade with China.

When the President was at Davos, he did say that he would consider going back into TPP if we could renegotiate the deal, and I think that is something that I have had some discussions with my counterpart. I would say we are not in active negotiations with that at the moment, nor is that the priority. But again, I think it is a willingness on the President's part to say we want the best deals for American companies to be treated fairly. If we can do it bilaterally, that is our preference. If we can enter multilateral agreements under the right terms, we will consider that as well.

Mr. CARTWRIGHT. All right. Now I want to shift gears. You recently spoke at UCLA regarding a number of issues, including the White House's economic agenda, and the obligation that you personally feel toward helping working families. The administration's tax plan that you have been talking about, has been touted as an

example of that. As we are seeing that tax plan take effect, and you talked about it earlier, it appears that only a small percentage of the \$150 billion tax windfall is going to workers, while the majority is going to shareholders. In fact, you mentioned that—you cited 400 companies that have announced one-time bonuses or raises. Gosh, if we only include traditional C corporations, there are 1.7 million of them in the United States. My math is that means 400 divided by 1.7 million is three-tenths of 1 percent, meaning 99.7 percent of traditional C corporations are not on your list of 400 companies announcing one-time bonuses or raises.

According to a report recently by JUST Capital, only 6 percent of the \$150 billion tax windfall ends up in the pockets of employees. Sixty percent ends up in shareholder dividends. Now, 80 percent of stock value in this country is owned by the wealthiest 10 percent of Americans. In November of 2016, you pledged that any tax plan would not give an absolute tax cut to the wealthiest Americans. That has subsequently been dubbed the “Mnuchin Rule.” I think the last time you testified here, you said, Well, that is not really a rule. But here is the question: As the Secretary of the Treasury, what are you going to do in the future to make sure the working families of America get a fair shake?

Secretary MNUCHIN. Well, thank you, and I think you raised some very good points. I do not agree with necessarily the numbers that you have referenced. We believe that the majority of the benefits in the tax bill will go to the middle class, and will go to companies that will pass on those benefits to the middle class. So our primary objective on the tax bill was make U.S. businesses competitive. We have had a worldwide system that if you deferred the tax, left trillions of dollars offshore, we wanted to fix that. We wanted to have a competitive tax rate for both big business and small business, which we did, and we believe that those will be passed on to workers. So we cited the number, and I realize there is different people who cite different things. We believe that it will be over 70 percent of the tax burden is borne by the worker, and that will be passed on.

Just briefly I just want to clarify this so, yes, I did say originally, it was the President’s objective that there was not going to be a reduction on the top end. That was never a pledge. That was our objective, OK. I was not the one who named the Mnuchin Rule it was Senator Wyden who dubbed it the “Mnuchin Rule,” and we worked very closely with the House and Senate as we designed this, to get what we thought was a competitive tax bill for our businesses and for the middle class.

Mr. CARTWRIGHT. Last question, Secretary Mnuchin. Obviously, the expected growth from the tax cut is what is fueling a lot of what the benefits you are talking about. That is what the hope is. My question is, aren’t you concerned, or are you concerned, about sinking our Nation \$1.5 trillion deeper into debt, what effect that will have on the national growth rate?

Secretary MNUCHIN. Sure. Well, let me just comment. I am concerned about the size of the debt. The Nation’s debt has gone from \$10 trillion to \$20 trillion in the previous 8 years. What I have said before I will repeat. I am comfortable—and, again, our assumptions I believe will be correct, but we will see—that the tax cuts will pay

for themselves. Having said that, there are other spending issues. This year it was a big priority of the President to get additional funding for the military. As a result of getting that passed, there is big increases in nonmilitary spending, but I do share your concerns about the size of the debt, and the issue of budgets in the future.

Mr. CARTWRIGHT. Thank you, sir. I yield back.

Mr. GRAVES. Thank you, Mr. Cartwright. Mr. Stewart, and then Mr. Serrano.

Mr. STEWART. Thank you, Mr. Chairman. Mr. Secretary, thank you for being with us once again. I am sure you look forward to these. You know, I have something I want to talk to you about, which is CFIUS. But I want to come back and address some of the questions or issues that have been brought up by other members of the committee, and elaborate on a few of them if we could. A very easy one that I just want to put on the table and allow you with clarity to state, and that is, there has been some concern over cuts to the IRS budget. Can you assure the American people that the IRS will have the manpower that is necessary to enforce current law and to collect the taxes that are due to the Federal Government?

Secretary MNUCHIN. Sure. Let me just comment. I do not always look forward to testifying, but I do look forward to coming to this committee because you control important funding that we need, so it is always a pleasure to be here.

Mr. STEWART. We appreciate that.

Secretary MNUCHIN. As it relates to the IRS, I am meeting every day with a combined team of the Office of Tax Policy at Treasury, and members of the IRS leadership team. It is one of my top priorities, making sure we implement the tax plan, which impacts literally everything at the IRS from customer service to forms to technology. That is why it is so important that we get the additional funding for it, and I can just say, look, there have been issues at the IRS in the past. We have tried to deal with these issues, but the vast majority of the workers at the IRS, I think, are incredibly hard working people.

Mr. STEWART. Mr. Secretary, I want this to be a simple answer. Just tell us yes or no, can you enforce the law so we collect our taxes?

Secretary MNUCHIN. Yes, we can.

Mr. STEWART. Thank you. And I just—I want you to say that with clarity, because there are some that will say we are unable to, and I think that is nonsense. Of course we can. You know, I love people to talk about tax reform, and the longer our Democratic colleagues talk about it, the better it is for us I think, because the American people aren't stupid. And when 80 or 90 percent of them look at their—look at their earnings, and actually see that they are making more money now than they were a year ago and when they see the economic growth—again, you can call it a scam, and I love Mrs. Lowey, she is one of my favorite people in Congress. I wish she wouldn't have left because I would like to say that to her, but you can call it a scam, but the American people aren't dumb, and they can see whether this is benefiting them or whether it is not.

And the fact is, is that 80 or 90 percent of them it is, but I think your point about—you know, we have two elements to this: One is that they are getting a tax refund, they are getting more money, they are able to keep more of their money, but I think the more important thing is what you said in your opening statement, and that is that the economy is growing. You said it is something like \$4,000 for an average family. Can you, very quickly, help connect the dots for members of this committee and other Americans why this tax reform leads to economic growth? And then I am going ask my second question, because I want you to try and divide this up in the 2 minutes we have left. I am concerned about CFIUS. As a member of the Intel Committee, we have very real concerns about how that plays out from an intelligence and from a security concern. Are you willing to work with us to support some reforms in the CFIUS process that would address some of those national security concerns that we have?

Secretary MNUCHIN. Yes, so on the first part, you know, we fundamentally believe we can get to 3 percent economic growth. The single most important issue is to create growth in the economy. The tax bill is the center stage on that and that critical to the growth.

In regards to CFIUS, I share your concerns with the current CFIUS. There is limitations. We have been working with the Senate on the FIRRMA bill. We look forward to working with you, as well. We need additional resources for CFIUS with new controls, expanded controls. So that is a top priority for us working with Congress.

Mr. STEWART. And in the minute we have left, can we balance—and tell me, and I don't know if you can address it here, maybe this isn't is the right forum, but can we balance our strategic economic concerns, and that is, when we partner and when we have the free flow of information and capital across borders, et cetera, that is generally a good thing, but we have to do it knowledgeably and recognizing that we have to protect our security, and also protect, I think, strategically, our economic interests. Can we do both of those, and what reforms would you suggest would help us to do that regarding CFIUS?

Secretary MNUCHIN. I believe we can, and I look forward to working with you and your staff on the specific reforms and some of the shortfalls.

Mr. STEWART. OK. Thank you, Mr. Secretary. Thank you, and Mr. Chairman, I yield back.

Mr. GRAVES. Thank you, Mr. Stewart. Mr. Serrano, and then Mr. Young.

Mr. SERRANO. Thank you, Mr. Chairman. Secretary, thank you for being here. As you know, Puerto Rico has gone through an unprecedented humanitarian crisis because of two Category 4 hurricanes that struck the island 6 months ago. As a result, Puerto Rico has lost tax revenues and even had to lend \$300 million to PREPA, the island's electric utility. The Governor of Puerto Rico has informed us, that the Treasury Department has yet to approve the community disaster loan, which was approved by Congress last October, and that Treasury is only offering \$2.06 billion out of a possible \$4.7 billion, so I have a couple of questions. My first one is,

mindful that the 78 municipalities are submitting separate CDL applications, why is Treasury only offering a fraction of the amount approved by Congress? And why has Treasury taken so long in approving the CDL loan?

Secretary MNUCHIN. Well, thank you for asking that question, and I share your concerns of obviously the impact that this has had on the economy there.

So first of all, let me just clear up certain issues. Within the overall bill, there was money that can be allocated to Puerto Rico. Not the entire bill was allocated to Puerto Rico, so that is number one. There are restrictions as to what can be allocated.

Number two, which has been misreported in the press, we have given the Governor and the committee a term sheet, so we are prepared to move forward with documents. We have been doing that. We have documents in front of them. They are asking for certain things, but we stand ready to lend them the money. We are also monitoring their cash balances on a weekly basis, and as part of my commitment to this I am actually going to stop in Puerto Rico on the way back from the G20 Finance Ministers Meeting to see the damage and make sure that the money is getting there quickly. So we are working with them, and I can assure you we have a team at Treasury that stands ready to lend them money right away. We are not holding this up.

Mr. SERRANO. Now, what is the main holdup, though? I mean, it is being held up. You are saying you are not holding it up.

Secretary MNUCHIN. Again, I would be happy to sit down with your staff and talk about this privately. There are things that they—they are asking for more, but I do not want to go into what the negotiation here is in this setting, but I can tell you there are documents that are in front of them that we are ready to lend, A; and, B, we are monitoring their cash flows to make sure that they have the necessary funds.

Mr. SERRANO. Well, I hope we can get that money flowing as soon as possible, and feel free to share with us when you wish what the problems may be because maybe we can be helpful with you.

Secretary MNUCHIN. Thank you.

Mr. SERRANO. And, you know, with the government on the island.

Most CDL loans have historically been forgiven by the Federal Government. Why is Treasury more concerned with imposing stringent terms on the loan than in forgiving CDL debt, something that is very concerning in light of Puerto Rico's precarious financial situation?

Secretary MNUCHIN. We are not making any decisions today whether they will be forgiven or they will not be forgiven. What we are focused on is, as I said, making sure that they have access to the funds, and we are prepared and ready to lend to them now.

Mr. SERRANO. So you are prepared to lend to them now, and you will make at a later date the decision whether these loans will be forgiven or not? I mean, this is historically something that has been done. This is not—wouldn't be something that you would be called out for in the press or anywhere for doing. It has been done before often.

Secretary MNUCHIN. Again, we are happy to follow up with you and your staff and talk through the specifics of that and get your views.

Mr. SERRANO. OK. There seems to be a lot of, I wouldn't call it secrecy, but a lot of things you can't say in public about the dealings of Treasury with Puerto Rico. I hope that that secrecy or inability to say these things in public does not continue to hold up the funds.

Secretary MNUCHIN. There is no secrecy. What I am being very clear on, and let me be perfectly clear, we have documents in front of them that we are prepared to lend. I think it would be inappropriate in this forum, there are changes that they want to these documents. I think it would be inappropriate for me to go through that level of detail. There are no secrets. Again, we are ready to fund to them now. There are things that they are asking for that is holding this up. But let me assure you, we are monitoring their cash balances, and as I have said to you as function of the importance of this I am actually stopping in Puerto Rico on the way back from my trip to the G20.

Mr. SERRANO. So in 2 seconds, the headline for today's meeting, and my question is, are you ready to lend now?

Secretary MNUCHIN. Absolutely. Money is ready.

Mr. SERRANO. Thank you.

Mr. GRAVES. Thank you, Mr. Serrano. Mr. Young has stepped out for a moment, so we will go to Mr. Moolenaar, and then Mr. Amodei.

Mr. MOOLENAAR. Thank you, Mr. Chairman, and good morning, Mr. Secretary, and thanks for joining us today for your testimony. My guest for the State of the Union was a gentleman from Clare, Michigan, Mr. Greg Rynearson, and I believe you had the chance to meet him before the speech that night. He is a former police officer, who, along with eight of his former colleagues on the force, saved the local bakery and doughnut shop from closing, and now nearly a decade later, they have worked hard, grown their business, and it is really an American success story.

They are excited about tax reform. They say it is going to help their business. They recently announced plans to open a new store in our State. And another company in my district, a printing company with two locations, announced bonuses are being paid to their employees' retirement accounts. And so all of this, as you would agree, is good news: higher wages; bonuses; better benefits; helping the hard-working people in our State keep more of their hard-earned money, and that is always a good thing. I want to compliment you, because Treasury turned around very quickly the implementation of the withholding rate that passed as part of tax reform, and your budget asked for \$397 million to help implement this new law.

And I am wondering, how much of it will go towards improving better service for those who need help from the IRS, for example, hiring employees to answer phone calls of concerned constituents, and I am sure you are already getting calls already, but how much of it will go towards improved service in that way?

Secretary MNUCHIN. Sure. Thank you. So, first of all, that request is a 2-year request, but that is money we need ASAP to im-

plement this. A lot of it will go to service, some of it directly, where we will hire more people to answer the phones, particularly during the peak of tax filing season. A lot of it will go to technology that will help interact and everything else. It was commented earlier, we have antiquated telephone systems. We want to modernize the technology so we can provide better customer service. We need to update all the forms to reflect the simpler ability to file, so there is—a lot of this money will help directly and indirectly. That is a major focus of ours.

Mr. MOOLENAAR. Thank you. And if I can shift gears a minute and talk about the question of sanctions that we have been discussing. Your Department is asking for increased funding for the implementation of sanctions on hostile nations, including Russia, North Korea, and Iran, and I am pleased to hear that you are implementing those sanctions and want to encourage you to move swiftly and decisively because I agree with you, I do think those sanctions in the case of North Korea, as you mentioned, are bringing them to the table and have been effective.

Your Department is monitoring financial transactions all over the world, and has the incredible task of identifying and dismantling threats to our country's financial system, including cyber attacks. I am wondering which countries and organizations are launching the most attacks on our financial system, and what is the cost of these attacks to Americans?

Secretary MNUCHIN. So, again, let me just first comment on the sanctions. We just released, 2 weeks ago, the largest package of sanctions that we have ever had on North Korea, so as you know, North Korea has been our number one priority. We are now reallocating a bunch of these resources for Russia sanctions, which are going to come out very shortly. On cyber and on the banks, again, we are constantly taking in lots of information from the banks, big data dumps to look at illicit activity.

In regards to cyber, I am not comfortable mentioning which countries specifically, but I am pretty sure you know the highlighted ones, and we are very focused on this.

Mr. MOOLENAAR. And do you need increased funding to prevent these attacks? Is that something we are going to see more of in the future?

Secretary MNUCHIN. It is.

Mr. MOOLENAAR. OK. And then another question I had is how can we improve information sharing with Department of State and other agencies to make sure sanctions are imposed effectively? It seems that there are a number of departments, agencies involved in this process, and what can we do to improve the communication there?

Secretary MNUCHIN. I actually think that works very well. I would say, first of all, through the NSC, we meet on a regular basis, multi times a week we are in communication.

Any of our sanctions do go through, whether we are doing them or not, they do go through what we call an interagency clearing process of both getting the Intel declassified and then seeking consent of State and others. So I think this process is working very well, both through the NSC coordinated process as well as direct conversations between myself, Secretary Tillerson, and our staff.

I also have regular meetings with Director Pompeo and other members of the National Security/Intel areas, because we could not do our work without what they do.

Mr. MOOLENAAR. Thank you very much.

Mr. GRAVES. Mr. Amodei, then Mr. Young. And then if there are additional questions, we will alternate between both sides, based on seniority down the dais here.

Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

Good morning, Mr. Secretary.

Secretary MNUCHIN. Good morning.

Mr. AMODEI. Real quick first, CFPB. I had seen in some of your earlier ruminations that, first of all, CFPB. Let's just say you were interested in the concept of a five-person board. And I know you guys are doing the best you can with Mick Mulvaney kind of filling in, but your thoughts changed on going to a five-person board for governing that outfit?

Secretary MNUCHIN. No, my thoughts have not changed. I think that, one, it should be subject to appropriations. I see no reason why that agency should be off balance sheet. And two, I do support the concept of a board to oversee it.

Mr. AMODEI. OK, great. Thank you.

The second thing is a little more pedestrian, but nonetheless, and I think we had let your staff know. It is like, hey, I don't want to talk to him about this in the appropriations hearing, but we are kind of where we were before that.

I had a request from a constituent who is entitled to some payments out of the Guam World War II Act, World War II claims fund. And so she had contacted our office, because she had been pursuing this through Representative Bordallo's office, who had sent Treasury Department, 2 months after you were sworn in last year, a letter asking about some interpretations. And that letter was in April, and she sent it to you and to Interior Insular Affairs, and Interior sent her back a response on the 11th.

So we contacted your office 2, 3 months ago and said, hey, you know, what is the deal on this letter? And we have contacted them about three times. And so I am not going to spend a lot of time on it. And rather than going through the gee whiz and all that other sort of stuff, my request is, can you send somebody from your Department under your supervision to my office to give us a briefing on this and whatever the response is to the letter that Representative Bordallo has been waiting for for over a year?

Secretary MNUCHIN. Absolutely. That will happen tomorrow, whenever is convenient. It is unacceptable that we have not responded to you. I can tell you I have met with them several times on this issue. We want to get it resolved. It is a little bit of a complicated issue, but it is unacceptable we haven't been responsive to you. So we will, whether tomorrow or the next day, whenever is convenient for you, we will have people come over.

Mr. AMODEI. Thank you. Good morning.

And I yield back, Mr. Chairman.

Secretary MNUCHIN. Thank you.

Mr. GRAVES. Thank you.

All right. Let's see. Mr. Young, do you have any questions for us down there? Then we will start over.

Mr. YOUNG. Thank you, Mr. Chairman.

Welcome, Mr. Secretary.

Secretary MNUCHIN. Thank you.

Mr. YOUNG. I was just out in the hallway talking to a farmer from Iowa, and he says there is not a day on the farm where a farmer doesn't touch steel. The agricultural industry and everyday farmer are worried about these tariffs on aluminum and steel. How much do you know about the proposed tariffs?

Secretary MNUCHIN. I know a lot about the proposed tariffs. I can tell you the President loves farmers and the agricultural community.

Mr. YOUNG. It doesn't seem so with some of the policies that are coming out. And there is great concern with folks in the heartland and concerns as well with retaliation and what that may mean to our economy. We have seen that the Tax Cuts and Jobs Act was great. We are really feeling the benefits of that. And there is a fear out there that any kind of a potential trade war or retaliation could really blunt the positive effects with the economy from the Tax Cuts and Jobs Act. Can you comment on that? Are you concerned at all with that?

Secretary MNUCHIN. Again, I am well aware of the fears of trade wars. I can tell you I have had very specific conversations with several of my counterparts. We are trying to deal with this on a case-by-case basis. The President is very involved in this. Again, I look forward to having the details, the exact details of this released. We are trying to get it out as quickly as we can this week.

Again, I think when people see this, again, I want to be clear that the President does want to make sure we protect the steel and aluminum industry. He does understand the potential impacts it has on the economy, and I think we have a way of managing through this.

Mr. YOUNG. So when the President's team was going through this and deciding whether or not to issue tariffs on aluminum and steel, did they meet with the stakeholders out there who could potentially be impacted by this? Did they meet with the agricultural leaders on this?

Secretary MNUCHIN. I can assure you that the Secretary of Agriculture has had significant input into these discussions. I can assure you that Director Cohn and myself have received lots of feedback on all these issues, and we are balancing the various issues.

Mr. YOUNG. So you are supportive of the President's move on the tariffs on aluminum and steel?

Secretary MNUCHIN. I am supportive of them. I am supportive of the mechanism as the President has announced, and I look forward to him announcing the specific details; that in the case of Canada and Mexico, our objective is to have a new NAFTA. Once we do that, which I am cautiously optimistic on, the tariffs will not apply to them.

Mr. YOUNG. And regarding NAFTA, I certainly welcome the re-looking at NAFTA and making sure that it is enforced and modernized. I would just urge that the administration not scrap NAFTA

altogether. That would be devastating to the American economy, let alone the agricultural economy. And I thank you for being here.

I yield.

Mr. GRAVES. Thank you, Mr. Young.

Mr. Secretary, I think you have a few more minutes with us. We have some remaining questions. I know I have a couple, and then we will see if Mr. Quigley and others do.

You have in the past referred to the Senate bipartisan regulatory reform bill as a balanced and thoughtful approach, and you have called on both chambers to move that bill through. There are many—I guess most of the components of the Senate bill, there are similarities with what we passed in the House CHOICE Act, of which this committee included basically the entirety of the CHOICE Act in our 2018 appropriations bill. And as we are wrapping up that final discussion, we are finding there are some similarities of a common thread of some of the Senate bill that is in our proposal.

Can you give us a little bit of your thoughts about the Senate bill provisions and your prospects for how that may move through the Senate, the House, or a conference, and whether or not we should include those provisions in our final 2018 conference bill?

Secretary MNUCHIN. Sure. Well, let me just first say I meet with Chairman Hensarling and Chairman Crapo on a regular basis. These are very important issues that we address. I am very pleased that things are moving forward in the Senate. I think this is very important legislation that strikes the right balance, particularly as it relates to community banks and regional banks and making sure that they can grow.

One of the big issues we have is that the top eight banks are too big. We need to make sure that community and regional banks can grow; they know how to lend. And I look forward to working with the members of the committee in the House as this moves forward.

Mr. GRAVES. Are those provisions you would like to see in our 2018 conference bill? Because we have currently included those provisions and more, and much more. And I think Chairman Hensarling and myself and others would like to see a more robust package, understanding where the Senate is. But there is a thought that maybe some of those should be included in our Financial Services appropriations bill as well, including CFPB, as you referenced earlier.

Secretary MNUCHIN. Look, you know my views on CFPB. I look forward to working with the House and the Senate on these issues. I think the most important issue is that we do get a bipartisan bill passed, that we need these changes and we need it to help the economy and our banks.

Mr. GRAVES. OK, thank you.

And then as it relates to the Terrorism Financing Targeting Center, you and I have had some good discussions about that. What is the administration's vision for the Center? If you could just sort of describe that to us in a little bit more detail today.

Secretary MNUCHIN. Sure. Well, this is one of my major priorities. I went to Saudi Arabia last summer to launch it. We have three buildings there that the Saudis have provided to us. We need to make sure we now have the appropriate staffing.

One of the buildings is designed specifically for us. We need to build out our necessary intelligence capabilities. One building is a shared building where everybody can come and work together. And then another building is for the Gulf countries.

I have committed to go back every year to make sure that we follow through on this. We need to get staff on the ground. The idea is to share intelligence and to do joint sanctions, and I think these can be very meaningful in our shared goals to stop illicit financing and combat terrorism. The money that we will spend on this has huge, huge, huge returns in its capabilities.

Mr. GRAVES. And with your current request, we will have, I guess it is \$25 million worth of request. What will the other countries be—what would be their involvement or their resources that they are including in this?

Secretary MNUCHIN. Again, the Saudis have paid for the physical buildings and various aspects there. The other countries will be contributing resources of similar amounts. We expect all the Gulf states to make a significant commitment to this.

Mr. GRAVES. That is good. That is something we want to hear—that we are not financing this solely ourselves, but we have partners.

Secretary MNUCHIN. No, not at all. This is a shared vision.

Mr. GRAVES. Thank you, Mr. Secretary.

Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Mr. Secretary, I just want to make sure we understand your commitment to come back to the committee with the details of how you are intending to use resources to enforce the sanctions that we spoke of earlier.

Secretary MNUCHIN. Absolutely. We will follow up with you on that.

Mr. QUIGLEY. Thank you.

We are talking about the tax bill. Let me just throw out a few numbers and get your reaction. The independent Joint Committee on Taxation estimates that the plan will add \$1.5 trillion to the deficit over the next 10 years. They are saying under the best of circumstances, even after accounting for economic growth, we are adding a trillion, which pushes back on your point that it would, with respect, pay for itself.

But Goldman Sachs, not exactly a bastion of liberal economic thought, concluded that it would add as little as 0.3 percent to the GDP over the next 2 years and could be slightly negative if we trend to the time in 2020 and beyond. The Tax Policy Institute—I am sorry, the Tax Policy Center estimates that the new tax law will increase GDP by 0.8 percent in 2018, but with trends, little effect by the end of the next 10 years.

So we are talking about a manufactured extraordinary addition to the debt crisis with, over time, extraordinarily little results to counter that. Your reaction to these pretty conservative institutions?

Secretary MNUCHIN. Let me just say I respect different people have different views, and the numbers will be clear. I think we are beginning to see the numbers, but this is all about economic growth.

Again, the bill scored to a trillion and a half dollars static, \$500 billion of differences between baseline and policy. We look at it as a trillion dollar issue. That is about 30 basis points of growth is the break even. So we think there will be close to 90 basis points of growth, but there is about 30 or 35 basis points of growth. Although certain things I agree with Goldman Sachs on, their research is not one of them.

Mr. QUIGLEY. I pass this on. Thank you, Mr. Chair.

Mr. GRAVES. Thank you.

I am going to ask a question or two on behalf of my colleagues who have stepped out a second.

On cybersecurity, given a lot of the national security threats and implications that we have already discussed in the financial sector, a lot of cost associated with that. Can you help us understand what Treasury is doing to establish and maintain cybersecurity standards across the industry? And then, as a former information officer yourself in the finance world, what is your impression of the cyber threats in the private sector now that you are Treasury Secretary? You have a different vantage point today, obviously.

Secretary MNUCHIN. Sure. Well, again, this is something I am spending a lot of time on, and it is something we need to continue to spend a lot of time on and take seriously, since these cyber threats will only increase, not decrease over time.

Yesterday, I participated in a principals meeting that DHS led specifically on cyber. We have responsibility for the financial sector. It is something that we take very seriously. This is a function of both—it is a private-public partnership. The primary responsibility for the financial sector is obviously in private companies, but we are working with them very closely. We are sharing intelligence with them closely. We are also working with the regulators very closely.

So, through my role on FSOC, I have convened the regulators, through the Financial and Banking Information Infrastructure Committee (FBIIC) and other areas. We are very closely working with all the appropriate regulators and making sure we have a coordinated approach to cyber.

Mr. GRAVES. Thank you. I understand it is very, very complicated.

Mr. Serrano, do you have any further questions?

Mr. SERRANO. Thank you.

Let me first say, Mr. Chairman, that I was very nervous for a second. Whenever I hear one of my colleagues mention the Jones Act, I get nervous because not too many people know that there are two Jones Acts. One has to do with shipping, and one was this week in 1917 Puerto Ricans got American citizenship. So I hope they don't make a mistake when they tinker with the Jones Act. Don't take away the wrong one, in my case.

Mr. Secretary, the CDFI Fund has helped entities invest billions of dollars in economically underserved areas, including in my district in the Bronx, New York. Nevertheless, your fiscal year 2019 budget proposes to eliminate all CDFI discretionary grant programs. I will be working with my colleagues on both sides of the aisle, with all due respect, to make sure that that does not happen.

However, since you propose to eliminate CDFI, how do you plan to cover the gap in providing affordable credit and investment capital to low-income communities and individuals?

Secretary MNUCHIN. Sure. Well, thank you. First, let me just acknowledge that the CDFI funds do provide significant benefit to many communities, and I know there is bipartisan support. So we look forward to working with you on this.

The decision to eliminate the CDFI was just a difficult decision as we looked at spending priorities across the Department and thinking that there are other mechanisms that we have and that there are private sector solutions. But, having said that, if Congress decides that they want to fund that, we will dutifully do that, and we acknowledge there are significant benefits.

Mr. SERRANO. Well, that took care of my second question, because you do admit publicly, which is a good thing, that it has bipartisan support—it always has—and it does a good job. And I hope that we can work together on saving the program and helping it grow, honestly.

Mr. Secretary, one last question. You have been quoted as saying that cutting personnel from the IRS can actually hurt in the collection of revenues. And I have always had to describe this concern that every time we cut an agent, we lose money, money that could be collected.

You are cutting thousands, it seems to me. How do you balance what you have said in the past and what you are doing in the budget? And I understand that some of these decisions are not easy to make. You just admitted the CDFI, you were not against it, but it was a decision that had to be made. What is the problem here?

Secretary MNUCHIN. Well, again, let me just say, you know, as we look at the IRS—and let me just commend, as I said, the many people at the IRS that do an incredible job collecting our revenues. It is an enormous organization, and we are making some difficult decisions on funding.

So, we asked for additional funding. We have also asked for an additional \$386 million in what we call program integrity cap adjustments. I know this is something that Congress has been reluctant to give us in the past, but I would encourage you to look at. It is a way of us raising additional money that can be used appropriately.

Specifically, in your comment in enforcement, there is no question additional people we put in enforcement do yield significant benefits in terms of revenue. We have asked for correction error authority, which will also simplify things.

So, again, we are just trying to manage difficult resource requirements across the IRS.

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Secretary, I just want to make sure I am clear on where we are at in terms of tariffs on Canadian aluminum and steel. Did you say the plan is to exempt Canada from those tariffs?

Secretary MNUCHIN. Again, I want to be careful about going into the specifics. The President will be announcing the specifics of this

later in the week. But what I can confirm, and he has mentioned this, to the extent that we reach our objective in renegotiating NAFTA, which is the priority, that Canada and Mexico will be exempt from those tariffs.

Mr. CARTWRIGHT. OK. And the other thing is, you were recently in the news about gun safety legislation. Obviously, we had another horrific shooting in Florida. We are at a point now in our republic where nine out of ten Americans support universal background checks. Eight out of ten Americans support banning sales to individuals who are on Federal no-fly lists because of being suspected terrorists.

You were testifying in front of the House Ways and Means Committee and you were questioned by Representative John Lewis, our colleague, and you said, quote: "I will say personally I think the gun violence, it is a tragedy what we have seen yesterday, and I urge Congress to look at these issues."

And then later, I think that same day or the day after, a Treasury spokesman walked that back. But I want to hear it from you, Mr. Secretary. Do you still urge Congress to look at these issues and, if so, what is it you are urging us to do?

Secretary MNUCHIN. Okay. Well, first of all, thank you, and I am glad I have the opportunity to clarify that. I, like most Americans, think that the shooting was obviously a tragedy and I think that gun violence is an issue, number one.

Number two, my comment that we clarified—it was not intended to be walking back; it was intended to clarify. When I urged Congress to look at these issues, it was a question in regards to do we have enough funding for different things on gun violence.

Let me just say this is an area, and although there are many things in the government that I focus on and I think I have some level of expertise, this is not in my lane. I do not have much expertise on this. I do commend the President for getting people together and the fact that he is willing to address this issue. It is an important issue and, you know, that is something that I know he is focused on.

Mr. CARTWRIGHT. To be clear, are you urging us to do something?

Secretary MNUCHIN. Again, what I was urging, the question was, is there enough money, in that part I was responding to, I urged Congress to look at the money issue.

As it relates to Congress and congressional legislation, this is completely out of my line. But, again, I know the President has been having active discussions on both sides of the aisle and reaching out to people, and this is an area that he cares a lot about.

Mr. CARTWRIGHT. So, yes, you were urging us to look at the money issue as respects gun safety. What money issue are you talking about?

Secretary MNUCHIN. Again, it was a question as to whether there was enough money in the budget for gun safety and other issues. But, again, I want to acknowledge, like most Americans, this is a tragedy, and I am glad that the President is working with Congress in looking at these issues.

Mr. CARTWRIGHT. I yield back, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Cartwright.

I understand Mr. Quigley has no more questions.

Mr. Serrano, any more questions?

Mr. Cartwright.

Mr. CARTWRIGHT. No.

Mr. GRAVES. Mr. Secretary, thank you again for joining us. As you have noted in the past, this is a very thoughtful and insightful committee and great questions and concerns about budget requests and policy. And I thank you for taking the time to join us today, to give us good, complete, and thorough answers to the best of your abilities. And we certainly understand the limitations of some places in which you can discuss and respect that. But I am grateful that you offered yourself and your staff to join members in alternate settings to help clarify any questions they may have.

Secretary MNUCHIN. Glad to be here.

Mr. GRAVES. But thanks again, Mr. Secretary.

Meeting adjourned.

Financial Services and General Government Subcommittee
Hearing on the Treasury
for the Honorable Steven Mnuchin, Secretary
March 6, 2018

Questions for the Record Submitted by Congresswoman Herrera Beutler

Cuts to Alcohol, Tobacco, Firearms and Explosives (ATF) Funding

The Administration's FY19 budget proposes a cut to the Alcohol and Tobacco Tax and Trade Bureau (TTB) that enforces current federal law, in order to transfer Bureau of ATF functions into the TTB. If the Administration wants to fund the transfer of ATF, it should provide additional funds but not from programs that protect public safety and the consumer marketplace.

TTB has made significant progress under recent funding levels. Within the last year, TTB increased its capacity to handle 15 new trade practice enforcement cases annually. This is no easy task given that these cases are, by nature, extremely time intensive and complex investigations that keep the marketplace safe, fair and transparent.

Question: Why would the Administration propose this change when TTB has made such great progress in working with state/local regulatory partners to ensure that entities in the marketplace follow the law?

Answer: TTB's recent enforcement and education efforts have successfully raised awareness in the regulated industry to the extent that the Administration believes that the level of voluntary compliance stemming from this effort can be maintained with fewer resources.

Question: How does the Administration plan to make sure the Federal Alcohol Administration Act is fully enforced?

Answer: The realignment of resources from trade practice enforcement does not mean that TTB will not continue to enforce those provisions. TTB will continue to enforce the trade practice provisions of the Federal Alcohol Administration Act.

Question: Why can we not enforce the Federal Alcohol Administration Act and also transfer ATF functions, without reducing necessary resources?

Answer: Ensuring a level playing field for regulated industry involves having the flexibility to devote resources where they can achieve the greatest benefit. Through its recent enforcement and education efforts, TTB can maintain the voluntary compliance gains made during the last year with fewer resources, thereby allowing those limited resources to be invested in other enforcement activities.

Tailored regulations

Financial institutions are increasingly diverse in size, offerings, business models and risk profiles to meet the needs of the communities and business across our country. However, it seems that financial regulations are blind to the variation and are crafted in a more one size fits all construct forcing all institutions to comply, regardless of size or applicability.

Question: What efforts are the Department of Treasury engaging in to ensure that moving forward, financial services laws and regulations are not “one size fits all,” but rather recognize the differences of smaller or less complex institutions, such as credit unions?

Answer: Treasury continues to communicate with and work closely with Congress and the regulators of depository institutions and their holding companies in their continuing efforts to better tailor the regulatory framework to such institutions. Such an approach would key regulatory requirements to the risks posed by depository institutions of varied sizes to the deposit insurance system, while retaining critical prudential standards protecting the safety and soundness of such institutions and the deposit insurance system. As shown by Treasury’s recommendations in its EO Report on Banks and Credit Unions issued last June, Treasury believes that it is critically important to reduce unwarranted burden on and avoid the imposition of one-size-fits-all requirements on depository institutions of all sizes and their holding companies. Treasury is very pleased that earlier this year, the President signed the Economic Growth, Regulatory Reform, and Consumer Protection Act into law (S.2155), to provide relief for America’s small, midsize, community and regional depository institutions, while maintaining important protections for consumers and taxpayers. Treasury believes this legislation will lead to increased investment in communities across the United States and foster greater economic growth for our country. Treasury looks forward to working with Congress and the relevant regulatory bodies to continue to improve our regulatory system.

Questions for the Record Submitted by Congressman Young

Private Debt Collection

The Internal Revenue Service (IRS) recently began implementing its debt collection program with external partners as required by law. This program has been scored to recover billions for the taxpayer, but also gives the IRS the resources to hire more enforcement staff without more appropriations. However, the IRS is placing a mere handful of accounts despite the fact that the program today has ready capacity to handle more than 10 times the volume. Every day the IRS does not act in compliance with the law, millions of dollars roll off the books - never to be recovered. Furthermore, every day we don’t collect those millions, we are digging ourselves further into debt or charging compliant taxpayers more than we should.

Question: Can you please provide my staff and I with guidance on why the IRS is not fully utilizing external partners the as the law requires? Can you also please provide us with the exact date in the coming weeks when you will begin complying with the law by increasing the inventory placed?

Answer: The IRS is responsible for implementing the Private Debt Collection program and takes its obligations under the Private Debt Collection program seriously. As of the date of the hearing, the IRS has been working diligently toward a fully engaged Private Debt Collection program. The IRS delivered the first Private Debt Collection accounts to the Private Collection Agencies on April 10, 2017. The initial number of assigned cases was small to ensure the protection of taxpayer rights and the secure transmission of sensitive information. Over the next nine months, the IRS increased the number of assigned cases and by the end of calendar year 2017, the IRS had delivered over 240,000 cases with a total of \$1.7 billion outstanding tax debt to the Private Collection Agencies. In calendar year 2018, the IRS plans to deliver between 700,000 and 800,000 cases totaling approximately \$5 to \$5.5 billion in total debt. Business cases will be assigned beginning in 2019. By 2019, the IRS will begin assigning all of the various types of cases to Private Collection Agencies.

Identity Theft and Fraud

As a cofounder of the Bipartisan Congressional Task Force to Combat Identity Theft and Fraud, I often hear from constituents as well as individuals and families across the United States who have fallen victim to dangerous scams. As we near the end of tax season, it is critical that the IRS work to inform taxpayers about dangerous scams and how to protect themselves from threats.

Question: What action is the Treasury taking to prevent identity theft and fraud? How many cases does TIGTA turn over to the DOJ for prosecution? Of these, do you know how many are prosecuted? What is the IRS doing to address synthetic identity theft?

Answer:

What action is the Treasury taking to prevent identity theft and fraud?

Refund fraud caused by identity theft (IDT) is one of the biggest challenges facing the IRS today, and the harm it inflicts on innocent taxpayers is a problem the IRS takes very seriously. The IRS has a comprehensive strategy focusing on preventing refund fraud, investigating these crimes, and assisting taxpayers victimized by tax-related IDT. Through the Security Summit, an unprecedented partnership between the IRS, the software industry, and the states, the IRS continues a unified battle against identity theft and works on collaborative solutions to combat stolen IDT refund fraud. IRS data shows significant improvements as fewer identity theft returns entered the tax system, fewer fraudulent refunds were issued, and fewer taxpayers were reporting themselves as victims of identity theft. The number of people reporting to the IRS that they were victims of income tax related IDT declined from 401,000 in Calendar Year (CY) 2016 to 242,000 in CY 2017 – a 40 percent decline. This was the second year in a row this number fell, dropping from 677,000 victim reports in 2015. Overall, the number of identity theft victims fell nearly 65 percent from 2015 to 2017.

As identity thieves evolve to become more sophisticated, the IRS has tightened its security in response to the increased threat. The IRS is making it harder for identity thieves to successfully masquerade as taxpayers and file fraudulent refund claims on behalf of these taxpayers. The IRS

and partners recognize that large data breaches of personally identifiable information (PII) are difficult and frustrating for the victims and financial ecosystem. Large-scale data breaches are a reminder of the value of data for fraudulent purposes and identity theft. Over the last several years, the IRS IDT fraud filtering processes have remained effective even in situations of large losses of PII.

The IRS continues to endeavor to strike the necessary balance between preventing identity theft and ensuring that legitimate refunds are released quickly. The IRS implemented strategic initiatives to assist tax preparers with authenticating their clients who have been victims of a data breach, as well as identifying refunds that can be released quickly, based on specific criteria. To stop fraudulent refunds from being paid, the IRS continually conducts analyses and looks for ways to improve and fine tune identity theft and fraud detection filters, as well as reduce the false detection rate. If the filter's selection criteria result in lower accuracy or performance, they may be revised or retired to minimize taxpayer burden.

The IRS uses several primary tools to combat tax-related identity theft and fraud. This includes tools specific to addressing taxpayers who have been victims of a data loss of federal tax information (FTI). Data losses involving FTI can be used to file returns that appear to be coming from the true taxpayer. IRS models and filters continue to be modified to address the level of sophistication used to file these fraudulent returns. The IRS has implemented the use of Dynamic Selection Lists, allowing the IRS to monitor specific accounts of taxpayers who have been victims of an FTI data breach when the data compromised would have a direct impact on federal tax administration. In doing so, the IRS is able to identify these suspicious returns more effectively, resulting in better protection for taxpayers' federal tax accounts and increased revenue protection.

In addition, there are multiple points in the return processing lifecycle to identify, prevent and assist possible IDT victims: pre-filing, at-filing, and post-filing.

To prevent IDT returns from ever coming in the door (pre-filing), the IRS worked with tax software providers to improve the procedures that their new and returning customers must use to identify themselves. This effort minimizes the chance that the taxpayer's software provider's account can be taken over by identity thieves. The additional security is one of the most visible signs of increased protection to taxpayers because they will notice password requirements and other website security features.

To prevent taxpayers impacted by tax-related identity theft from becoming a repeat victim, the IRS issues an Identity Protection Personal Identification Number (IP PIN). The IP PIN authenticates the return received as belonging to the taxpayer.

The IRS has also implemented a variety of mechanisms to prevent criminals from using a deceased individual's identity information to perpetrate fraud. The IRS routinely locks the accounts of deceased taxpayers and has locked more than 30 million accounts so far.

In addition, IRS has taken the following actions to prevent fraud and enhance cybersecurity:

- Sponsored the first Bureaued Cybersecurity Community of Practice forum to enhance information sharing of Cybersecurity best practices. This led to two additional forums sponsored subsequently by the Mint and the Alcohol and Tobacco Tax and Trade Bureau.
- Established the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC), which provides a public-private partnership for participants to collaborate and share information; to detect and deter identity theft tax refund fraud; and to protect taxpayers.
- Implemented network protection capability that blocked transmission of over 196,000 un-encrypted emails from leaving the IRS network, preventing the possible disclosure of sensitive data such as social security numbers and passwords.
- Implemented and leveraged multiple cybersecurity threat countermeasures to prevent malware from being accessed or installed within infrastructure assets.
- Expanded the Integrated Enterprise Portal (IEP) environment security protections and tools that significantly improved the detection and remediation of attempted external attacks aimed at IRS.gov via automated scripts, bots, and suspicious and malicious Internet Protocol addresses. The layered security tools protect taxpayer facing applications at the earliest entry point of the IRS infrastructure, which is the edge of the security and portal environment.
- Implemented advanced analytics and fraud detection capabilities within the IRS IEP and eAuthentication environments to better protect access to the Get Transcript application.
- Enhanced monitoring and analytic capabilities through investments in infrastructure, tools, and development expertise to accelerate continuous data monitoring.

With respect to regulation, Treasury and the IRS published proposed regulations in September 2017 to permit employers to truncate employees' social security numbers on copies of Forms W-2 that are furnished to employees. These proposed regulations aid employers' efforts to protect employees from identity theft and respond to concerns about the effect of identity theft on tax administration. We look forward to finalizing these proposed regulations.

What is the IRS doing to address synthetic identity theft?

With respect to synthetic identity theft, the IRS does not segregate traditional identity theft from synthetic identity theft; however, the IRS has measures in place that will screen, prevent and/or identify either type of identity theft. For example, IRS Criminal Investigation (CI) does:

- Partner with their local Identity Theft Coordinators;
- Maintain contact with other Law Enforcement Agencies (task forces) and public/private sector (working groups);
- Coordinate with financial institutions;
- Employ fraud filters, and;
- Continue priority investigative work in this area.

For instance, the IRS CI division works with the other business units to conduct analysis on fraudulent filings to look for deceased Social Security Numbers (SSNs) or SSNs with anomalies in activity, such as change of address/change of bank account for direct deposit. If a child's SSN is used to file a false return, that action raises a red flag for the cross reference with the

dependent database (DDb) or the requirement of previous year information to authenticate the identity. Realizing criminals could gain access to some or all of this, IRS CI uses available resources to ensure the likelihood of proper interaction and filing.

Synthetic identity theft makes the identity authentication much harder. The longer the criminals can harvest, control and establish the synthetic identity, the more challenging it is to authenticate accurately the proper identity. It becomes critical to also interact with the financial institutions to ensure they are properly meeting requirements and implementing effective Know Your Customer practices, and for the IRS to continue education in this area. Through the coordination with groups like the National Cyber Forensic Training Alliance, IRS CI is working alongside other law enforcement partners, financial institutions, and analysts to use available data sets to screen and identify known threats.

How many cases does TIGTA turn over to the DOJ for prosecution? Of these, do you know how many are prosecuted?

With respect to cases referred by TIGTA to the DOJ for prosecution, we refer Congresswoman Beutler to TIGTA and DOJ. Those offices will be in a position to respond to the inquiries about their activities.

Questions for the Record Submitted by Congressman Quigley

CFIUS Reforms

Question: Secretary Mnuchin, can you confirm that nothing in the Foreign Risk Review Modernization Act of 2017, or its implementing regulations, is intended to subject outbound transactions to Committee on Foreign Investments in the United States (CFIUS) reviews if they have already been authorized for export by the Export Administration Regulations or International Traffic in Arms Regulations, including by license exemption?

Answer: The Foreign Investment Risk Review Modernization Act (FIRRMA) expands CFIUS's jurisdiction to cover certain foreign acquisitions of real estate in the United States and certain non-passive, but non-controlling foreign investments in U.S. businesses. FIRRMA also strengthens export controls to address national security risks pertaining to technology transfers through collaborative business arrangements, such as joint ventures.

Travel

Question: Please list all travel by the Secretary from his first day in office through the date of receipt of this question, including both official and political travel and categorizing each trip (or segments of a trip) as official or political.

Please indicate the date of departure and return to Washington, D.C., for each trip; the purpose of the trip; the number of Department of Treasury staff persons accompanying the Secretary; the total cost of the trip, including all costs incurred by all persons accompanying the Secretary; the total cost for all trips by person; and whether the cost of the trip was borne by Treasury, another agency, or a non-governmental entity.

If the trip was paid by Treasury, indicate from which Treasury account the funding was drawn. If any costs were initially borne by Treasury or another federal agency for a political trip, please indicate when Treasury or the other agency was reimbursed for its expenditures, by whom, and whether reimbursement in full has been received.

Answer: Treasury releases Secretary Mnuchin's calendars and travel schedule on a periodic basis in an effort to promote government transparency and openness. In addition, to further its commitment to careful stewardship of taxpayer dollars, the Department has made publicly available official travel details of Treasury Secretaries dating back to 2006, including travel spending by secretary and fiscal year. This information is available online at <https://www.treasury.gov/FOIA/Pages/calendars.aspx>. Treasury takes seriously its obligation to expend taxpayer dollars in a prudent manner, and it is fully committed to abiding by all federal laws and regulations governing official travel.

Question: Please provide the same travel information as in the first question for all political appointees, by name, on the Treasury Department roster as of the date of receipt of this question.

Answer: Please see answer above.

WEDNESDAY, APRIL 11, 2018.

INTERNAL REVENUE SERVICE

WITNESS

DAVID J. KAUTTER, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. GRAVES. Well, good morning. Good morning, everyone. And we are going to go ahead and call this meeting to order and we look forward to hearing the testimony today from the Acting Commissioner, Mr. Kautter. So thanks for joining us, and we appreciate your service and willingness to be a part of this subcommittee this morning to discuss the IRS budget for 2019. And we realize you are testifying before us in this committee for the first time, but this is also a very busy time of year for you, so thanks for taking the time to be with us.

Late last year, Congress passed and President Trump signed into law the Tax Cuts and Jobs Act. And as a result of this historic tax reform legislation, American families are taking home more of their hard-earned money. Businesses are expanding and confidence in our economy is growing, which means more jobs and opportunities for the American people.

As Mr. Kautter is well aware, implementation of this law falls primarily on the IRS, which is why we provided \$320 million for its implementation in last month's government funding bill. Specifically, this funding will go toward updating 100 different IRS IT systems to accommodate more than 100 new tax code provision before the next filing season. This subcommittee is also committed to providing an additional \$77 million in 2019 to finish the law's implementation. So, I look forward to hearing how this implementation is progressing and how we can maintain that momentum as we move ahead through this year.

But continuing on to the 2019 budget request that is before us, it also includes more than \$500 million for Operations Support. And I know the Inspector General and the Government Accountability Office repeatedly commented on the IRS mismanagement of IT projects in the past. From insufficient IT work plans to legacy systems that run on software language from the 1950s, this mismanagement puts our tax collection operations at risk.

This committee expects better as I know you do as well, Mr. Acting Commissioner. So, I look forward to discussing how these funds will contribute to the replacement of legacy systems in the days ahead, and the positive impact it will have on the overall taxpayer's experience.

Additionally, the IRS is a prime target for cyber and identity theft, because of the massive amount of personal information it receives and stores. We learned just a little while ago that over 2 mil-

lion attempts any given day are against the IRS and that information. In recent years, the IRS faced problems from data breaches in some of its e-services such as the GET Transcript Identification Protection Pen Apps, and the Free Application for Federal Student Aid Form, which as we know, is parents with kids going to college as FASFA.

These breaches allowed cyber criminals to access taxpayer information and file fraudulent tax returns. The IRS must improve its cyber defenses and do more to protect taxpayer data. Similarly, improving a taxpayer's experience is a major focus of this subcommittee and has been for the years that we have all served on it. In the past two annual appropriations bills, we have provided the IRS with targeted funds to improve the customer service experience.

With the 2018 filing season drawing to a close, I am very interested in learning what kinds of improvements our constituents are experiencing, and what they can look forward to this year. But to that end, my top priority on this committee and in writing the appropriations bill as we look ahead is ensuring that the taxpayer is truly respected. The IRS is on the front lines but it does not have the best track record. So, I look forward to hearing how our targeted investments are making life easier for the taxpayers and holding the IRS accountable for bad behavior.

So, before wrapping up my comments, I want to zoom out our focus just for a moment and as we begin to look at the 2019 bills, and as a subcommittee, not forget the success we had last year. We had tremendous success, not only as a subcommittee but as a full committee, in defying all the odds as we passed all 12 appropriation bills for the first time in over a decade and regular order with a lot of minutes, a lot of debate, and a lot of discussion.

So I hope that we have that same commitment this year. All of us together, to work together to do the same as we have begun our hearing process and hopefully have all our hearings done as a subcommittee by the end of the month, and maybe full committee next month, and have them all out of the House in June. Would not that be great if we could do that? Or early July, I would be OK with that.

That said, Mr. Kautter, thank you again for taking the time to meet with us today. I look forward to working with you and hearing your testimony. Thank you for your position that you have taken here. I know that you have two hats, two jobs that you are performing, and I look forward to hearing your testimony. But at this moment, I would like to turn to my ranking member here, Mr. Quigley from Illinois, for his comments.

Mr. QUIGLEY. Thank you, Mr. Chairman. I share your optimism. I know, I am a Cub fan, so I am not sure what that means. I want to also join you in welcoming the Acting Commissioner for the IRS, David Kautter, to this subcommittee. Mr. Kautter, I want to thank you for taking time and look forward to listening to your testimony. I am going to keep my remarks brief in the interest of allowing sufficient time for our witness to share his thoughts in response to the panel's questions.

This hearing comes at an important time as taxpayers nationwide prepare to submit a tax return for the 2017 tax year. The IRS

is tasked with the core Federal responsibility for the collection of more than 3 trillion in taxes, distributing more than 400 million in refunds and providing service to millions of taxpayers in the process. Funding to support the IRS's mission constitutes the single largest category of spending under this subcommittee's jurisdiction. And we take seriously our responsibility to ensure that the agency is able to perform its functions in a fair and competent manner.

With this in mind, I was disappointed and surprised to see the President's budget request for the IRS in fiscal year 2019 seeks a reduction in resources for the agency. This comes at a time when the national taxpayer advocate has sounded the alarm on irresponsible cutbacks to frontline employee training. The Inspector General for the Tax Administration is reporting that 24-hour taxpayer assistance centers, which provide a crucial in-person service for many older and rural taxpayers, are currently closed during the height of the filing season, due to insufficient funds.

Even more confusing is the fact that for the fiscal year during which this administration's new tax law is due for implementation, this budget proposes to reduce taxpayer services, staffing at the agency by thousands of positions. After multiple years of inexcusably long wait times and unanswered phone calls, taxpayers finally saw an improvement in the level of service delivered last spring during the filing season. And yet, for the coming year, when taxpayers face a brand new system of rules and systems, your budget request promises a drop from 78 percent level of service down to just 54 percent.

This year, with the resources appropriate for the IRS by Congress, the IRS will make 7,761 staff available in answering the toll-free phone line. Your fiscal year 2019 Request will cut the number of staff for this purpose to just 6,023 available to answer the IRS toll-free line. I sure hope that you can help us make sense of this during our discussions today, and I thank you again, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley. I would like to recognize the acting commissioner for his testimony. I know you have a statement for the record, but feel free to make some remarks if you would like to here. And then we will go in to some questions that we may have for you. Thank you again for joining us, Mr. Kautter.

Mr. KAUTTER. Perfect. Thank you, Chairman Graves, Ranking Member Quigley, and members of the subcommittee. And thank you for the opportunity to discuss the IRS Budget and current operations.

I want to begin by thanking Congress, and especially this subcommittee, for providing the IRS with an increase in funding for fiscal year 2018 in the Omnibus Budget Bill enacted last month. This funding will allow the IRS to continue delivering on critical priorities including improving taxpayer service, updating our information technology infrastructure, increasing cybersecurity, and safeguarding taxpayer data. I also want to express my appreciation for the additional \$320 million in funding to implement the Tax Cuts and Jobs Act and especially for the flexibility we were given to shift resources between accounts.

Implementing the new tax law is a critical priority for the IRS this year and next. This is the first major tax reform legislation in

more than 30 years and will require extensive work by the IRS. Our goal is to ensure taxpayers and tax professionals can understand and navigate the changes made by the new law.

Implementing tax reform is a huge undertaking. We estimate the IRS will need to create or revise about 450 tax forms, publications, and instructions. We will need to publish extensive guidance, including regulations, notices, frequently asked questions, and we will need to reprogram about 140 inter-related, integrated tax return processing systems to be ready for the 2019 filing system.

So I am extremely grateful that we are receiving this additional funding in the early stages of our work on the new tax law. It ensures we can start critical implementation activities on time, and knowing funding is available through next year allows us to let contracts appropriately and have the resources needed to test our processing systems in the first quarter of Fiscal 2019, shortly before the beginning of the next tax filing season. The broad scope of our efforts required us to begin our implementation work almost immediately, as soon as the law was enacted.

Our initial steps to implement the new tax law included revising the withholding system to take into account the various changes by the statute. We have also begun issuing guidance including several notices to help corporations begin complying with the new transition tax under code section 965. Our work to implement the new tax law as continued while we have been administering the 2018 filing season. Even with this challenge, I am pleased to report that the filing season has gone well.

As of last Friday, April 6, the IRS has received more than 103 million individual tax returns which is about two-thirds of the returns we expect to receive. We have issued more than 79 million refunds for more than \$226 billion. About 80 percent of the returns filed so far claimed a refund with the average refund totaling about \$2,900. These numbers are consistent with those for 2017 with the number of returns received up from last year by about 150,000, which is about one-tenth of 1 percent. The number of returns filed electronically up by about 440,000 or one-half of 1 percent, and the average size of the refund up \$13.

The other major challenge during the filing season was the need to implement tax-related provisions in the bipartisan budget agreement, enacted in February. This required us to reprogram our processing systems to handle the retroactive extension through December 31 of this year of more than 30 individual and business tax benefits that expired at the end of 2016. It was the first time the IRS had ever been required to implement retroactive tax extensions in the middle of a filing season.

Looking ahead, the President's Fiscal 2019 Budget requests an appropriation of \$11.497 billion for the IRS which is \$11.135 billion in base resources plus \$362 million provided through a Program Integrity Cap adjustment. The President's budget submission seeks less costly ways of delivering taxpayer service and maintaining enforcement using technology, training, and internal efficiency. The budget balances competing priorities and increases funding to operations support by 6.2 percent.

Dedicated funding is needed now to modernize IRS hardware and software so that we have the technology needed to run day-to-day

operations, transform the taxpayer experience, improve cybersecurity, and ensure we can continue to safeguard taxpayer data. The IRS is subject to 2.5 million attacks on average each day, 1 million of which are sophisticated attacks. Some of the attacks are efforts to acquire taxpayer data and some are efforts to disrupt the functioning of the United States government.

Against this backdrop, it is important to realize that 59 percent of the IRS hardware and 32 percent of its software is obsolete. In regards to taxpayer service, we understand Congress' concerns. We are taking steps to improve service on our various channels and we look forward to working with Congress in this area. I would note that the investments needed to improve IRS information technology that I mentioned a moment ago are critical to our efforts to improve taxpayer service. It is clear that one of the most important things we can do for taxpayers is upgrade our IT infrastructure.

In addition to ensuring adequate funding for the agency, Congress can also help the IRS by enacting three pieces of legislation that will improve tax administration: renewing stream-lined critical pay authority, allowing correction procedures for specific errors, and giving IRS authority to require minimum qualifications for tax return preparers. These provisions, along with the other items highlighted in the budget, will help the IRS continue building on its work to serve the Nation's taxpayers.

Chairman Graves, Ranking Member Quigley, and members of the subcommittee, that concludes my statement and I would be happy to answer any questions.

Mr. GRAVES. Thank you, Mr. Kautter. And this morning, we have a lot of subcommittees meeting today, so I think over 50 percent of the appropriations subcommittees are meeting, so we will have members come in and out. And I know even some of our members here even have other committees they need to join this morning.

So, I am going to defer my questions to a little bit later this morning and I think Mr. Quigley has agreed to do the same. And with that, we will start with Mr. Moolenaar and then Mr. Cartwright will be next with any questions they may have for the Acting Commissioner. Mr. Moolenaar, you are recognized.

Mr. MOOLENAAR. Thank you, Mr. Chairman. And thank you, Mr. Kautter. I appreciate you being here today with us. I wanted to follow up with you on some of the issues you have raised on IT modernization. You mentioned that more than 59 percent of the IRS's hardware is past its useful life and 32 percent of the software was behind.

And so, I just wondered if you could comment in more in-depth on what your plan is to ensure that the hardware and software are updated. And can you explain why this has happened. Because that seems to be a pretty serious problem, especially in this era of cybersecurity.

Mr. KAUTTER. Sure. Thank you. I think it is important to recognize that although 59 percent of the hardware and 32 percent of software is out of date, the IRS has done a pretty good job, in my opinion, over the last several years of prioritizing where it spends its money. The core processing system for filing and processing tax returns has been modernized and updated.

And that is where a substantial amount of the funding that this committee has appropriated to the IRS has gone. The cyber defenses around that system have operated fairly well, but cyber criminals are constantly evolving and changing their approaches and so the IRS spends a substantial amount of money trying to ward off those cyber attacks.

Where a lot of the inefficiency, where a lot of the obsolete equipment and software rests, is in the day-to-day equipment used by IRS employees. So the laptops, the printers, fax machines, and so forth. Last week, we conducted a series of four calls with IRS managers.

And so, as somebody new to the agency—I have been with the IRS about 5 months—it was interesting to participate in those calls. What I took away from the call, frankly—those four calls, we had about 3,000 employees—was a desire on the part of people at the IRS to do a good job, to perform at a high level, and to carry out their responsibilities for taxpayer service.

The sense of frustration with laptops that might take 2 or 3 weeks to be repaired, with software, with help support questions that took a day or two to be answered, with software updates that were not quite working the way they were supposed to and interfacing, was one of the most clear messages anybody could have received. So, you know, I think when we talk about how much is obsolete, it is easy to get concerned that the core system is in bad shape. That is not the case. That is in pretty good solid shape in my opinion. But a lot of surrounding operations is where the challenges are.

Mr. MOOLENAAR. So, if I were to summarize, you do not feel like taxpayer personal data is at risk because of these outdated systems or machines, but maybe in terms of the work environment and the frustrations of sort of day-to-day operations that that is where the problem lies?

Mr. KAUTTER. I think that that is a fair way to state it. I do worry about cybersecurity every minute of every day, to tell you the truth. And I do worry about hardware that is out of date and software. When we say obsolete, what we mean is that the software is at least two updates behind.

Mr. MOOLENAAR. OK.

Mr. KAUTTER. And that worries me. But the core system, we are really focused intently on that and I think doing a pretty good job.

Mr. MOOLENAAR. OK. And then, I wanted to just change directions a little bit and talk with you a little bit about some of the cryptocurrency or virtual currency that has become popular. And my understanding is that in 2017, one Bitcoin equaled over \$19,000, U.S. dollars. And the most recent IRS guidance on existing tax principles applied to transaction using virtual currency goes back to 2014. And I am just wondering what your plans are, either to update that guidance? I understand it is considered property, and do you believe that should be updated?

Mr. KAUTTER. That is a topic that we are very intently focused on. You are exactly right. The latest guidance is 2014. We treat cryptocurrency as property, as basically capital asset and not as a currency. There are many unanswered questions that we are dealing with, with respect to cryptocurrency. There are so-called “forks”

with cryptocurrency where the currency sort of divides, and we have a taskforce, we have a group within the IRS, focused on those questions.

The biggest concern we have got, frankly, with cryptocurrency, is not just the tax treatment. It is the fact that cryptocurrency seems to be a way to evade Federal Income Tax. And so, the Criminal Investigation Division is very much focused on this. They have got some investigations underway. So, it is both issues, both the technical side and then what is happening on the tax evasion and avoidance side.

Mr. MOOLENAAR. Thank you very much.

Mr. KAUTTER. Yes, sir.

Mr. MOOLENAAR. Thank you, Mr. Chairman.

Mr. GRAVES. Mr. Cartwright and then Mr. Yoder.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. And thanks for being here, Mr. Kautter. I appreciate you taking the time and I want to talk about a couple of things. The effect of the cuts to your administration asked for in The White House Budget. I understand the President's proposed funding cuts will have a particularly harsh effect as you all implement the new tax plan.

Last year, roughly 25 percent of Americans who attempted to contact the IRS could not get through. National taxpayer advocate, Nina Olsen, reported to Congress that up to 60 percent of Americans will not be able to get through during the 2018 filing season. My question first is: is additional funding the only barrier keeping the IRS from better serving the American people?

Mr. KAUTTER. I would say funding is a key factor. Yes, sir.

Mr. CARTWRIGHT. OK. And other than requesting additional funding, what specific steps have you taken to develop or implement a plan to deal with that particular issue?

Mr. KAUTTER. With the taxpayer service issue?

Mr. CARTWRIGHT. That is right.

Mr. KAUTTER. Well, what is actually interesting, I think, is that of the calls the IRS receives, only about 5 percent relate to the tax law itself. Ninety-five percent relate to account questions, refund questions, things like that. We have tried to move as much of that online as we can and do it in a user-friendly fashion.

For the taxpayer assistance centers, for example, there are 363 of those. They will help about 5 million taxpayers this year. About half the people that call for an appointment at a taxpayer assistance center get their question answered on the phone. And so, a lot of the technical assistance for taxpayers, we are trying to put out as much as we can in terms of guidance on www.irs.gov. And we are trying to connect forms around the country and help tax return preparers get up to speed as well as our own people.

I know, as a 40-year tax practitioner and being on the other side of the table from the IRS, taxpayer service from the IRS is critically important. I know how important it is and I have lived it day in and day out. The choices in the budget that have been submitted, it is basically a recognition. Not that taxpayer assistance is not important; it is important. It is recognition that at 2.5 million cyber attacks a day, we have got to make sure that we have got our equipment and our software up-to-date and we fend off those attacks.

Mr. CARTWRIGHT. OK. And not to put too fine a point on it, the President's budget for fiscal year 2019 asks for 24.5 million in cuts. You do not want that, am I correct in that?

Mr. KAUTTER. I would say the IRS could put to good use any money that this subcommittee decides to appropriate.

Mr. CARTWRIGHT. OK.

Mr. KAUTTER. We have plenty of use.

Mr. CARTWRIGHT. Another place that money is well-spent is on audit staff, right?

Mr. KAUTTER. Yes, sir.

Mr. CARTWRIGHT. It is the backbone of our ability to catch tax cheats in America, right?

Mr. KAUTTER. Yes, sir.

Mr. CARTWRIGHT. Now, there has been a steady decline in annual audits and what we have is a new tax plan that really is rife with opportunities for tax avoidance that can set the stage for significant increases in tax evasion in this country. So, my question is first, the IRS has stated in the past that increased cuts lead to lower rates of enforcement which results in about \$5 billion in tax revenue going uncollected each year. We continuously make these cuts to taxpayer services, weaken tax enforcement, and create more opportunities for evasion under these circumstances. Do you believe that we can afford to sustain this system of voluntary compliance and keep reducing audit staff?

Mr. KAUTTER. There is a point, Congressman, at which the cuts in enforcement and the reduction in enforcement will have a dramatic effect on revenue. I do not know, nor can anybody tell us, exactly where that point is. But the audit rate overall is down 37 percent over the last 10 years. It is down in every single area that we audit but one, which is estate and gift tax, which is sort of hard to explain. But in some areas the audit rates are down 40, 50 percent and we have been able, I think, to manage fairly effectively. I think the agency has done a fairly good job but it is at a point where I think we need to start focusing on additional resources.

Mr. CARTWRIGHT. All right. And finally, your testimony speaks for itself, of course. But instead of the \$24.5 million in cuts as came out of The White House Budget, what is the increase you are looking for?

Mr. KAUTTER. Well, we are looking for the additional funding for tax reform implementation. And I think we have not, at least to my knowledge, Congressman, decided on a specific number that we would recommend. So at this point, I am supporting the \$11.1 billion. I think the Program Integrity Cap of \$362 million would help a lot. So I think that added to the \$11.1 base budget would help us quite a bit.

Mr. CARTWRIGHT. Thank you. Mr. Chairman, I yield back.

Mr. GRAVES. Thank you, Mr. Cartwright. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Mr. Commissioner, thanks for being with the committee today. I appreciate your testimony. I want to start by asking you about the minimum standards ideas for qualified preparers who provide tax services.

And I know in your testimony, you echoed the President's budget request proposal to require that all tax preparers meet minimum standards to prove they are qualified preparer services, and I think

you state that there are around 400,000 uncredentialed tax preparers in the country. And I guess I would like to know what is the impact of that? How does that impact our tax collection? How does it affect fraud? How could creating a set of minimum standards improve the efficient collection of taxes or reduction in fraudulent payments?

Mr. KAUTTER. Sure. Thank you, Congressman Yoder, for that question. About 56 percent of all returns prepared are prepared by paid tax return preparers. There are about 650,000 tax return preparers in the country, 400,000 of which, as you point out, are uncredentialed, which means they are not attorneys, they are not CPAs, and they are not enrolled agents. Our experience has been that individuals who are not credentialed do not tend to file returns at the same level of accuracy that credentialed preparers file.

We are also concerned that some of those uncredentialed preparers engage in fraud and impose burdens on unsuspecting taxpayers. It is also expensive from an administrative point of view, right? The time that we have to spend chasing people who have improper returns where the returns filed that do not match the data that we have on hand. And so our experience has been that credentialed preparers' returns tend to be of a higher caliber and require less effort on the part of the IRS to enforce the law.

Mr. YODER. And so, one of the solutions that the IRS has proposed over the years is to go to this tax preparer qualification program.

Mr. KAUTTER. Yes, sir.

Mr. YODER. Does the IRS currently have statutory authority to pursue such a program? And if yes, are you working on developing such a system? Do you need changes in law? And can you describe for the committee what that tax preparer qualification program would look like? How would the preparers' qualifications be assessed?

Mr. KAUTTER. Sure. In 2011, we attempted to impose or issue a tax return preparer program, and it would require certain levels of education and competency. That was struck down in 2014 by the courts. In 2014, we embarked on a volunteer education program for tax return preparers which has been very modest in its success, so we believe we would need statutory authority to issue or provide such a program for tax return preparers. So, legislative authority, we believe, is necessary.

Mr. YODER. OK. I want to turn our attention to our error and fraud rates in general and what we are doing to combat that. This is my 8th year on the committee, and with your predecessors, I think almost every year we have talked about, in particular, the Earned Income Tax error and fraud rate.

Your agency has stated publicly that between 21 and 26 percent of all Earned Income Tax credits or claims are paid out in error, which is a staggering number for government programs, which we know have lots of bureaucracy and waste in everything, really, that we try to do at a governmental level. But 21 to 26 percent fraud or error is really its own league in how problematic that is. And that accounts for tens of millions of taxpayer dollars that were improperly paid out.

According to the Treasury Inspector General, as of March 1 this year, the IRS has already processed 9.4 million returns, with \$46.9 billion in EITC refunds. In the PATH Act passed by Congress in 2015, the IRS is required to hold back EITC refunds for returns that trigger additional review. Can you tell the committee what percentage of total returns claiming the EITC have been flagged for review, what indicators are most common for triggering review, and have we made any progress in reducing the fraud and error rate in this program?

Mr. KAUTTER. Congressman, I do not have the statistics for this year yet. We have implemented a series of additional filters and screens to try to identify in the EITC program. We are focused on it. I think the PATH Act provisions requiring us to hold those returns until February 15th has been very helpful. I think we will find that that has substantially reduced the amount of improper payments. We are in the midst of filing season. We have got 6 days to go, and so I can get those numbers for you as we have them.

Mr. YODER. Well, I know you are quite busy right now, but I would love to see those numbers.

Mr. KAUTTER. Yes, sir.

Mr. YODER. Because we want to see if we are making progress. So, if you would follow up with the committee and my office, I would really appreciate it.

Mr. KAUTTER. It is a serious problem. Yes, sir.

Mr. YODER. Thank you, Mr. Commissioner.

Mr. KAUTTER. Thank you.

Mr. GRAVES. Thank you, Mr. Yoder.

Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. Thank you again, Mr. Kautter. The National Taxpayer Advocates' 2017 annual report to Congress highlighted the implementation of the IRS' private debt collection program as one of its most serious problems and concerns. The report found that not only is the program failing to generate revenue, but also the implementation is inconsistent with the law and disproportionately focuses on low-income and average working taxpayers.

Can you give us your take on that report and specific actions the department will take in response to the report's findings and recommended actions to improve the IRS's private debt collections program's oversight and administration?

Mr. KAUTTER. Yes, sir. A little bit of background, and we are in the process of responding to the Taxpayer Advocates' report. Last April, we entered into contracts with four private debt collection agencies. Since that time, we have turned over about 305,000 accounts for collection. That is about a little over \$2 billion of outstanding debt that individuals owe. We have spent about \$45 million so far on getting the program up and running, and we have collected about \$35 million under the program.

Now, the \$45 million represents the total cost of getting the program up and running. Part of that cost was we wanted to be meticulous in making sure that taxpayer data was appropriately secure and that the systems that the various debt collections were using were secure. We have also conducted onsite visits with each of those debt collection agencies and have found that, for the most

part, they are acting in accordance with IRS regulations and standards. We will go back again shortly and do another review of those debt collection agencies.

I understand that this is a very sensitive issue. A large number of those accounts that are turned over are accounts that are below, say, 250 percent or 400 percent of the poverty level, so it is a lot of low-income accounts that are turned over. It turns out that when you look at the data for where the outstanding debt is, a substantial amount of the outstanding debt in that taxpayer group.

Mr. QUIGLEY. When you turn these accounts over, is there sort of a sensitivity or awareness of who you are targeting?

Mr. KAUTTER. It is—

Mr. QUIGLEY. I mean, is there also a balance that you may be going after people who just do not have the money?

Mr. KAUTTER. Every account that is turned over is an account where a taxpayer, we believe, owes the Federal Government money. If it turns out that the money cannot be collected, we engage in our normal processes, and if we cannot collect it, it cannot be collected. But we try to pursue what is available under the law and what is expected of us in terms of pursuing a balance that is owed the Federal Government.

Mr. QUIGLEY. How do you compare the effectiveness of what they are doing versus—if you can, apples to apples—with how you normally collect, go after it from a debt collection point of view?

Mr. KAUTTER. It is a very similar process, congressman. The only accounts that are turned over are accounts that the IRS pursued to the full extent of its resources and has concluded we just do not have the capability, the resources to pursue the account any further. And so, those are the accounts that tend to be turned over to the private debt collection agencies.

Mr. QUIGLEY. Does that mean they are harder to collect?

Mr. KAUTTER. They are harder to collect, yes, sir. We have tried everything we can before we turn over an account. It is not that we just select a group of accounts and turn those over. We go through our full array of processes in dealing with taxpayers before the account is turned over to a private debt collection agency.

Mr. QUIGLEY. If there is more time, I would go into more debt—more concerns on these things. But, you know, we used to have concerns about people posing as debt collectors. Has this not muddied those waters, where we used to tell them that there are not private people doing this, and now there are? So, it is harder to advise people who are particularly vulnerable, like senior citizens, of how to distinguish this.

Mr. KAUTTER. It is. We have tried to put in place processes so that it is clear who is acting on behalf of the IRS and who is not. Having said that, we have problems across the board with individuals trying to impersonate the IRS and basically defraud people out of their own money. And those techniques continue to evolve.

This year, there is a technique where somebody will call you be on the phone, usually the elderly, claim they are from the IRS, claim that an excess refund went into their account, and they owe the IRS money. And if they do not pay the IRS the money almost immediately, that they will levy on the account. And it is not an IRS person; we do not do business that way. So, it is a constantly

evolving challenge to keep track of the ways individuals will try to defraud people out of money and using the IRS as its imprimatur.

Mr. GRAVES. Thank you, Mr. Quigley. Mr. Young, from Iowa, you are recognized.

Mr. YOUNG. Thank you, Mr. Chairman. And I want to pick up on the conversation you were just having with my colleague, Mr. Quigley, regarding those scams that are out there. It is April; people are doing their taxes. And many times, in their interactions with the IRS they realize something is not quite right, and maybe their identity has been stolen, or there has been some real issue.

Aside from what you just highlighted with Mr. Quigley, what are some of the other kind of IRS-type scams that are out there that the American people need to know about? One. And, two, how are you informing the American people about these, and how to be watchful for them?

Mr. KAUTTER. Well, Congressman, whenever we become aware of a scam, we immediately issue press releases; we try to get on radio; we try to communicate with taxpayers in whatever way that is available to us. Sometimes the fraudsters are so convincing and so compelling that, no matter what we say, people are intimidated into believing the IRS is after them, and they are defrauded from their money. So, the scams are important for us to focus on.

And as I said, it would be nice to be more proactive, but we end up being reactive, because we do not know where the crooks are going until they actually engage in that sort of behavior and we hear about it. I think the one area where we have made a lot of progress is with respect to taxpayer identity theft. And we have worked closely with the tax return preparer industry and with state revenue departments. And with respect to tax-related identity theft, the reported cases have gone down from about 697,000 two years ago to 242,000 at the moment.

We have set up a separate unit within the Wage and Investment Division of the IRS to help people who are the victims of identity theft. We resolve those cases now; 75 percent of those cases get resolved with 3 months, maybe 3 to 4 months, which is about half of the time it used to take. So, when we become aware of something that is systemic, we put in places processes and procedures to deal with it. And I think we have had pretty good success, but it is the continuously evolving nature of these scams that is the biggest challenge.

Mr. YOUNG. There are a lot of them out there, a lot of bad people who want to bilk people of their money. I would advocate that you highlight somewhere—maybe it is just on your website, or have a social media account, Twitter account—you talk about issuing a press release about the scams out there. I know you probably go beyond that.

Mr. KAUTTER. Yes, sir.

Mr. YOUNG. But highlight those right away on social media, what to look out for, those kinds of things. And you say that 75 percent of those cases of ID theft get resolved. When you find the perpetrator, they get sent over to the Department of Justice for prosecution. Tell me about that.

Mr. KAUTTER. So, there are two aspects, the victim and the perpetrator. And the victim is where we set up that separate unit, and

we get those cases resolved, as I said, 3 to 4 months—robably closer to 4, as I think about it. We also get the Criminal Investigation division of the IRS involved in these particular situations. They work very closely with the Department of Justice on referrals with respect to prosecution.

We try to highlight those prosecutions as a deterrent for others who would think that they may engage in this sort of behavior. And my personal experience is the Criminal Investigation division at the IRS is a very effective division. They do a very good job. They are very thorough, they are very quick, and I have had great confidence in the job they do.

Mr. YOUNG. So what are the penalties? The people who are taking others' identities; are they just getting a fine? I want to see them in jail.

Mr. KAUTTER. It is. I mean, it depends on the nature of what they do, but it could be tax fraud, which could be criminal, could be a felony. And we try to prosecute to the full extent available under the law.

Mr. YOUNG. Do you find that the DOJ is cooperating with you all in making sure that this is a priority?

Mr. KAUTTER. They are. We have a very strong working relationship with the Department of Justice, and they are very responsive to our needs.

Mr. YOUNG. Thank you for your testimony and for being here today.

Mr. KAUTTER. Thank you.

Mr. GRAVES. Thank you Mr. Young. I have a couple of questions, and then if members have some additional questions afterwards, we will continue.

I wanted to ask you a little bit about the Income Verification Express Service. It was something that in a recent funding bill, we had some report language directing the IRS to write a report on potential automation of the IVES program, which is known as data-sharing API. Today, I understand the process still involves some paper and fax machines to do some of this work. And this is really some important information that lenders need to provide more capital to the small businesses and such. So, can you give us a little update on how a change like this can occur, and hopefully will occur, and what the process is for that?

Mr. KAUTTER. Sure. Thank you, Mr. Chairman, for that question. We have been working with the mortgage industry to make sure that the IVES system works in a way that facilitates their needs. We have gotten third-factor identification; so, username, password, and then a text.

When we first implemented that, that created some problems for the mortgage industry. We worked through that; we have set up a working group that is meeting periodically and with the managed services industry to make sure that they can get access to the information they need, while balancing the risks to taxpayer privacy as part of that system.

There is no right answer to this system. Different people would do it different ways. The inspector general would do it differently than the way we are currently conducting it. I will tell you, I have had some discussions with representatives of the mortgage indus-

try, and they are, in fact, looking at another alternative to accessing the IRS databases, and we are fully supportive of helping them facilitate whatever needs to be done to make sure that system works effectively. I think it has been working pretty good. We have gotten favorable comments back recently.

Mr. GRAVES. That is good. Well, is this a process that will take some time still? It sounds as if you have begun the process and are still working with the industry, but you are open to modifications as time goes on.

Mr. KAUTTER. That is exactly right. As I said, the industry has been looking into another database at another agency which they think may serve their purposes, and if that works better for them, we will do everything we can to facilitate that. We want the system to work. It is that balance between giving third parties access to taxpayer information and making sure that we do not improperly disclose taxpayer information.

Mr. GRAVES. Right. Thank you. We spoke a little bit earlier about the new tax reform law that has been implemented, and this is going to be a huge challenge, I know, for the IRS in its implementation. We have some additional resources to work with, and the President signed an additional \$320 million for that implementation. Can you describe the progress that is being made to update—and I know a lot of this is going to be IT-related—a lot of your systems to accommodate this new law? Because it is going to be tremendous.

And then, as we move forward, I know that as taxpayers—looking to the next 6 days as the filing season comes to a close—it will be the last time that the old tax law is being used to comply with and going into the new one. And so, I know you are taking a lot of steps. You have additional resources. But my hope, and maybe you can reassure this for me, that next year will be easier from a filing perspective, but also an imitation from the IRS's interface with the customer.

Mr. KAUTTER. Sure. So, first of all, for the third time, thank you again for the \$320 million. It is a great benefit, and especially the flexibility. The way we plan to spend that money: 73 percent of the funds are earmarked; we believe will be used for technology. So, updating those 140 integrated tech systems that operate the taxpayer filing programs.

About 19 percent of the funds will go for taxpayer education and outreach. We expect probably an additional 4 million calls as a result of the tax bill, so a significant part of the funding will go for outreach, education, and seminars for tax return preparers.

Four percent of the funds will go for forms, instructions, and publications, and another 4 percent of the funds will go for guidance, regulations, frequently asked questions, and other press releases and other guidance. We expect we are going to have to update about 450 forms—it could be less than that—put forms, publications, and instructions.

Where things stand; we expect by the end of this month to have most, if not all, of the forms for next year drafted. We expect to have the instructions for those forms pretty much done by the end of May. The plan is to release over the summer those forms and instructions for public comment and review. We will be working on

the publications over the summer as well and may release some of those, but we do not often release those for comment.

Starting at the end of April, once we have the forms designed, the core forms, the technology piece will start. So, we will start in May to revise our programs to incorporate the revised forms and instructions. Guidance we are working on continuously. There are 79 grants at regulatory authority in the bill, not to mention other broader grants that we have.

We have issued a number of notices. We are working on regulations constantly. We hope to have a steady stream of guidance in the form of frequently asked questions, notices, proposed regulations, and final regulations coming out this spring—we have already issued some—but the spring, summer, and fall. It will take us a couple of years at least to get guidance out on the entire bill.

I think the two most challenging parts of the bill, from an administrative point of view, to implement will be the new international provisions and the 20 percent deduction for pass-through entities. In both those situations, we are basically building new tax regimes that did not exist before, so we have gone from a worldwide system of taxing our multinationals to a pretty much territorial system. And that is a completely new system for the United States.

It comes with base erosion provisions, which are controversial. Some of our international trading partners have some concerns with some of those provisions. So, that is an enormous part of the challenge. The pass-through provision I think is going to be challenging to draft. I think we can do it, but I think we will spend inordinate amounts of time on those two parts of the law, implementing that.

Mr. GRAVES. We have great confidence in you. That is an ambitious schedule, and thanks for laying that out. That helps us. And I know 6 months ago or so, when you stepped into your role here, you probably did not anticipate the challenges that lie ahead. Thank you for the progress and laying out the plan there. Mr. Quigley?

Mr. QUIGLEY. Thanks, Mr. Chairman. I just want to follow up on that. The original estimate from the IRS was about \$495 million for the cost of implementation. Was that over a period of years, or you just settled for \$320 million because that is what you could get?

Mr. KAUTTER. That is a great question. Thank you. So, the \$495 million was an estimate that was sort of a back-of-the-envelope estimate that we came up with, looking at implementation of the Tax Reform Act in 1986.

Now, in 1986 there was no internet; there were no PCs; and a large part of the cost of implementing the 1986 Act was printing forms. Well, that is a much smaller cost today. So, what we did was, after doing that back-of-the-envelope calculation, we went back and did a grassroots bill of all the forms we thought we had to change, all the instructions, all the publications, and try to refine the numbers best we could. And what we found was the cost of printing and distributing forms had gone down substantially; the internet and the ability to communicate technologically dramatically helped our ability to reduce the cost in implementing this bill.

And so, \$397 million is a number that has been developed from the operating divisions up, and it is fairly detailed. Is it perfect? I doubt it. But we did the best we could, and I think we will be in pretty good shape with that amount of money.

Mr. QUIGLEY. But it runs into next year's request—

Mr. KAUTTER. Oh, yes, yes.

Mr. QUIGLEY. Which is a downward departure. I am just curious: how do those two flush together to allow you to move forward?

Let's say this is enough, and you are absolutely right, to do what you need to do and probably can do in 2018. But 5 percent of the calls that you say that come about the tax law now; the decimal point may even move over next year. So, how does the fact that you may have enough this year run into next year's request?

Mr. KAUTTER. Sure. So, we put the budget together before we knew what the number was going to be for tax reform implementation. And so, that is why, for this year and next year, we requested a separate amount of \$397 million for tax reform implementation, in addition to the \$11.1 billion base request. So, we have got \$320 million that we can use this year and next year; our original request was for the \$397 million; our belief is we still need that additional \$77 million. The flexibility to use that money over 2 years is really very helpful.

Mr. QUIGLEY. And have you talked to the administration about what you just said in terms of what your needs are going to be?

Mr. KAUTTER. Yes, sir.

Mr. QUIGLEY. And their reaction?

Mr. KAUTTER. Well, the \$397 million number that we have proposed was developed with full discussion with the Secretary of the Treasury. In fact, I meet with the Secretary every day on tax reform implementation. And so, he is fully supportive of the \$397 million number.

Mr. QUIGLEY. So, this next time year, it is going to be a happy-happy, joy-joy discussion, things will have folded under? You are going to have enough money, right?

Mr. KAUTTER. If we get 397, I think we can do the job. I think we can do it.

Mr. QUIGLEY. Thanks.

Mr. KAUTTER. Yes, sir.

Mr. GRAVES. And I can say that I have had multiple conversations with the Secretary of the Treasury about that very same number, and he has full confidence as well. And you have an additional role; I know that you work very closely as Assistant Secretary to the Treasury of Tax Policy.

Mr. KAUTTER. Yes, sir.

Mr. GRAVES. Correct? Mr. Amodei has joined us and has a question for you.

Mr. AMODEI. Thank you, Mr. Chairman. Mr. Commissioner, welcome. And you may not know this, but if you do not, that is fine. I can take the answer offline. You know, we hear a lot of talk these days about agencies responding to, or not responding to, requests for various committees, at least in the House, regarding data information for stuff they are looking at.

As we sit here, are you aware of any outstanding data requests from any committees in the House that have not been fulfilled?

And if you are not, that is fine. But I would just like to ask you on the record to kind of check on that and give us an answer to say, "Hey, as far as"—I know some of that stuff started quite a while ago in the previous administration, but as we are finding out, there is a lot of stuff from the previous administration that is still hanging fire. So, I am just curious as to, is there anything outstanding where information is forthcoming?

Mr. KAUTTER. I will follow up on that.

Mr. AMODEI. I appreciate that. I yield back, Mr. Chairman.

Mr. KAUTTER. Thanks. Mr. Amodei, I will say, at one point in my career, I was a Senate staff person for a member of the Senate Finance Committee, and sensitivity to responding to Members of Congress and their requests is paramount, in my mind.

Mr. AMODEI. And I appreciate that. And it is not the reason I get up in the morning, but when you hear that it is an extended amount of time, whatever you like, in your business, and mine, you do not always like the news, but you think you have got a right to know what the information is. So, I appreciate it.

Mr. KAUTTER. It is a fair point.

Mr. AMODEI. Thank you.

Mr. KAUTTER. Thank you.

Mr. GRAVES. Easiest question of the day right there. I have an additional quick question, and then, Mr. Young, if you have a question after that, you are recognized. I guess it was earlier this year, and just last month, the Ways and Means Committee, one of our subcommittees, released a draft proposal called the Taxpayer First Act, and I just want to get your thoughts on that.

Mr. KAUTTER. Sure.

Mr. GRAVES. And if you can share, how does that fit into your plan and the IRS's plan moving forward? And any feedback as they work through that.

Mr. KAUTTER. Sure. We have had discussions with the Ways and Means Committee staff as they put that bill together, and for the most part, we are supportive of the provisions in that bill. I mean, we would have to go through them one by one, but for the most part, we think it is pretty constructive.

I do think there is one provision that seems small but is very important to me as someone who has come into the government from private practice, and it is the ability to allow the IRS to change its structure after consulting with Congress. The current structure of the Internal Revenue Service was put in place in 1998, so it is 20 years.

There are not many organizations in the country who have had the same operating structure for the last 20 years, and I think there are things that can be done to facilitate taxpayer service. So, organizational management, the basic thing is that structure follows strategy.

If the strategy is taxpayer assistance, and we are not happy with the level of taxpayer assistance at the moment, then I think we have to figure out what needs to be done to improve that and implement a structure that supports that strategy. And other than that, the provisions are fairly straightforward, very functional, and I think for the most part pretty sound.

Mr. GRAVES. Great, thank you. And I encourage you and your staff, the team you are working with—that is encouraging to know you have that relationship to give them your thoughts there as well. Mr. Young, questions?

Mr. YOUNG. Thank you. Just one question. My understanding is when there is a dispute between the IRS and the taxpayer, the IRS will reach out the taxpayer and say, “There is an issue here,” or sometimes the taxpayer will reach out to the IRS and think there may be an issue there with their return or something to do with the IRS. And there is an appeals process, and they go through that.

For the taxpayer to get the information they need to have everything necessary for the appeal to present their case, they have got to go through a FOIA request to the IRS to get the information the IRS has that they may be using as an information or a tool against them. Do you think that is ridiculous? Because I do, and a lot of people do.

Mr. KAUTTER. One of the areas that the Ways and Means Committee is working on as part of this restructuring bill is exactly that.

Mr. YOUNG. That is the FAST Act?

Mr. KAUTTER. Yes, how the appeals process works. And I do think there are changes that could be made there that would facilitate taxpayer knowledge and assistance and simplify the process, frankly, for both the IRS and the taxpayer.

Mr. YOUNG. So, we have your full endorsement of the legislation?

Mr. KAUTTER. I did not know that I said that exactly.

Mr. YOUNG. You did not, but it is good to hear that, just internally, you recognize there are ways to improve this for the experience for the taxpayer; transparency, accountability, and cooperation. It is needed. Thank you for recognizing that.

Mr. KAUTTER. I agree, and that is why I think the IRS restructuring act can be a catalyst for generating change with the agency. So, I think it is a good path to get at, frankly.

Mr. YOUNG. Thank you for recognizing that there are common-sense approaches that we can all agree on. Thank you.

Mr. GRAVES. Mr. Kautter, thank you for your thoughtful responses to a very thoughtful committee. They have a lot of great questions and insights here and hope you see that we look forward to working with you. And we want to make sure that you are successful, and your agency is successful. Because that means our constituents’ needs are being met, and that they are pleased with their interactions and interface with the IRS, which is not always the most pleasant interaction to ever have.

So, thank you for your willingness to step in as an acting commissioner this time in your career. And I know you have other responsibilities. It is a busy time of year for you, as it is for us. Thanks for your time today in joining us.

Mr. KAUTTER. Thank you, Mr. Chairman. Thank you, Mr. Quigley.

Financial Services and General Government Subcommittee
Hearing on the Internal Revenue Service
for the Honorable David J. Kautter, Acting Commissioner

Responses to Questions for the Record Submitted by Congressman Graves

IT Modernization

The IRS is in the process of replacing the 1960s Individual Master File system, which is the core tax processing system for over 250 million individual taxpayers, with the Customer Account Data Engine 2 or CADE 2.

Since the success of CADE 2 is so critical to IRS's modernization efforts, please explain why the conversion to CADE 2 is taking so long and when does the IRS anticipate that CADE 2 will be fully operational? What is needed to expedite CADE 2's completion? What are the potential risks to taxpayers and the IRS with the conversion taking so long?

Since the Individual Master File dates back to the 1960s and includes all individual income tax filers, there is concern that its functionality and impact on the current and future filing seasons is putting taxpayer data at risk as well as hindering the tax filing process.

Question: Why is the conversion to CADE 2 taking so long?

Response:

Three primary factors related to technology and human resources have limited the pace of CADE 2 development:

1. **Complexity of Tax Law Business Rules:** Since the Individual Master File (IMF) was built 56 years ago, additions have been made to the base code annually to implement changes to the tax law. As a result, the base code now reflects every tax law change made since 1962 and includes embedded business logic that only a small number of the IRS's personnel understand. As part of CADE 2, we are taking an important step of 'harvesting' the logic. This is done by examining both the code and the documentation to extract business rules and is necessary to separate the logic from the code. This simplifies both the modernization effort and subsequent maintenance. If this is not done properly, the IRS will expose itself to higher than acceptable levels of risk to the entire tax processing system.
2. **Downstream System Dependencies:** Limitations of Assembly Language Code (ALC) or of the underlying data record layout have caused the IRS to continuously add new systems to its IT environment over the past six decades to deliver new business capabilities. Because the IMF was the first IRS taxpayer database system, most of the ancillary systems within the IRS are now dependent upon it. As an analogy, one could think of the IMF as the cerebral cortex of the IRS tax systems, with hundreds of

downstream systems serving as the nervous system – the IMF sends and receives data constantly throughout the system. Like the IMF, these systems are generally written in outdated coding formats so both the systems and interfaces to them face similar risks as the IMF. This means that we must take extreme care with modernization activities to understand and then deal with the ripple effects of any one change to the IMF. If the IRS does not dedicate the time needed to understand dependencies and regression test changes thoroughly, unintended consequences could negatively affect many of our critical business processes, including refunds, financial statements, customer service, and compliance. This requires a meticulous and robust test strategy and an extensive period of parallel validation.

3. **Shortage of IMF and ALC Subject Matter Experts (SMEs):** The IMF contains over 500,000 lines of legacy ALC with unique coding conventions and complexities that simply do not exist in modern programming languages. Our ALC and IMF Subject Matter Experts (SMEs) possess the deep understanding of how the IMF works that is critical to modernizing it. SMEs are retiring every day and the ones remaining are at full capacity, tasked with multiple responsibilities: 1) maintaining the IMF, 2) analyzing annual tax law changes and updating the system to implement those changes, including tax reform (by far the largest change to tax processing in three decades), and 3) providing support to the modernization effort. We are very proud of our IMF development team and the heroics they go through every year. However, training someone to proficiency takes a minimum of 3 to 5 years, further limiting our ability to maintain a workforce to support legacy IMF. Hiring freezes, competition for individuals with programming experience, changes in the tax code, and the expiration of the IRS's streamlined critical pay authority are all contributing factors hampering our ability to hire new SMEs. This has resulted in an increased reliance on contractor support, which increases costs, outsources the most critical piece of IRS business systems, and diminishes the pipeline of replacement government resources. However, with the direct hire authority we received from OPM, the IRS believes it can address its workforce challenges.

Question: When does the IRS anticipate that CADE 2 will be fully operational?

Response:

While the IRS has made significant progress toward modernizing the IMF, it is a huge undertaking. To limit risk and demonstrate incremental progress toward modernization, the IRS is delivering CADE 2 through three phases called Transition States. The first Transition State (TS1), successfully built out, stabilized, and migrated all IMF data to the CADE 2 relational database and was completed in 2014. The second Transition State (TS2) is currently in progress, with a target completion date of 2021-2022. CADE 2 will be fully operational once the IRS completes Transition State 3 (also called Target State). There is not yet a target completion date for Transition State 3. The timeline for Target State will be established and approved prior to the conclusion of TS2. Because of the complexities of the modernization, IRS is focusing on the most critical part of modernizing the IMF – the core processing components. IRS has recently completed an update of the CADE 2 Solution Architecture, including a definition of Target State and it will be the basis for a program planning effort scheduled to start in Q1 2019. This effort

will establish the full CADE 2 program roadmap encompassing all remaining transition states and the Target State. That roadmap will determine the scope of the remaining transition state(s) and a completion date. IRS is monitoring project schedules and resources closely and pursuing additional hiring authority in an effort to mitigate these risks, deliver TS2 on schedule, and begin work on the final state.

Transition State 1 – Completed in 2014: TS1 successfully built out, stabilized, and migrated all IMF data to the CADE 2 relational database. Additionally, TS1 enabled the use of CADE 2 data for online access and extracts to numerous downstream IRS systems, supporting customer service and compliance. The IRS shifted tax processing from weekly to daily processing, resulting in faster refunds, notices, and improved taxpayer service by providing more current taxpayer information across the IRS. By shifting all individual tax processing from a weekly cycle to daily cycles, all transactions, including refunds, are processed on average 5 days faster. The faster processing provides posted taxpayer data to internal operations within 24 to 48 hours to support accounts management and customer service. Posted refunds designated for direct deposit are in the taxpayer's bank account within 4 business days and paper refunds are mailed within 6 business days.

Transition State 2 – In progress, Target Completion 2021-2022: TS2 has been focused on three strategic goals:

1. Reengineering the IMF by applying modernized programming language.
2. Establishing the CADE 2 database as the Authoritative Data Source (ADS) for financial and legal purposes.
3. Addressing the Unpaid Assessment Financial Material Weakness (FMW) for individual taxpayer accounts.

The program is now focused on reengineering the IMF core components by applying modernized programming language. The other two goals (FMW and ADS) are currently on pause to ensure scarce resources can focus on the core IMF modernization. The pause is a result of:

- budget reductions,
- years of hiring constraints,
- limited IMF subject matter experts (SMEs),
- contention for people, specialized skillsets and expertise among other high priority initiatives, and
- an increased understanding of CADE 2 developmental needs.

The projects that were paused are detailed in the Appendix and will be addressed in the program planning update in FY 2019.

The IRS is now reengineering the most complex areas of the IMF where the majority of the tax law is embedded. By leveraging the initial translated code and significant logic harvesting that has been the primary focus thus far in Transition State 2, the IRS is forward-engineering the code into a modern java architecture. Because TS2 encompasses the goal of modernizing the core IMF processing components, it is the most complex transition state.

Key accomplishments delivered include:

- Deployed database conversion capability that now allows the IRS to retain expanded taxpayer history for approximately two billion taxpayer records, improving service and enhancing compliance.
- Implemented common code across IRS systems to enable consistent and accurate penalty and interest calculations on financial statements, resulting in no projectable errors identified in the fiscal year 2016 Government Accountability Office annual audit.
- Modernized one of the IMF's most complex set of financial reports, Financial Recap Reports, and deployed it into parallel production to allow for business validation of CADE 2 reports against IMF results.

Transition State 3/Target State – Not started, Target Completion TBD: The final transition state will modernize the remaining IMF components, including IMF pre-processing (validation of tax transactions) and post-processing applications (distribution of taxpayer information to other IRS and external systems). Unlike the core components of the IMF addressed in TS2 (which contain all the tax law changes since 1962 and the associated business logic), IMF pre- and post-processing are possible candidates for deploying commercial off-the-shelf (COTS) products or tools. These could be used to perform the validation and distribution services required to replace the remaining components of IMF processing. Prior to completion of TS2, we will conduct a program planning effort to establish the timeline for TS3/Target State by leveraging the Solution Architecture. This program planning exercise is expected to start in the first quarter of FY19.

Question: What is needed to expedite CADE 2's completion?

Response:

The effort to finalize and document the CADE 2 Target State Solution Architecture is complete. The Solution Architecture provides a better view of the full scope of work required to modernize all components of the IMF that remain after the completion of TS2. There are three primary aspects to expediting CADE 2's completion:

- **Consistent and Adequate Funding:** The IRS needs dedicated and consistent funding to continue to progress on core components and will need to allocate funding in the future to reinitiate the implementation of the FMW and ADS projects to achieve the Target State.
- **Availability of IMF SMEs:** As highlighted above, SME availability is a key requirement for IMF modernization. The number of developers who know and understand the antiquated technology and complex tax law business rules is decreasing at an alarming rate. Fifty percent of the current workforce is eligible for retirement this year. SMEs are working at capacity supporting annual tax law changes, including the tax reform bill, and cannot be dedicated to modernization full-time. This slows the speed at which the IRS can deliver CADE 2.
- **Development of a Comprehensive Plan:** The complexity of the IMF requires the IRS to take a methodical approach to modernization, providing time to review all IMF system dependencies and embedded logic in CADE 2. This requires robust testing and periods of

parallel validation before the IRS can confidently retire the legacy IMF while simultaneously minimizing the risk of adversely affecting annual filing season activities.

Question: What are the potential risks to taxpayers and the IRS with the conversion taking so long?

Response:

- While the IMF has successfully supported tax filing for the past 56 years, it has become increasingly difficult to implement annual tax law changes with the decreasing number of SMEs who understand how the system works. To help mitigate this risk in TS2, the IRS has prioritized the most complex aspect of CADE 2: modernizing the core IMF processing components. This strategy will help to simplify the architecture and build knowledge across the broader workforce.
- The IMF's legacy code imposes technical limitations that prevent the IRS from implementing modernized capabilities that customers need. For example, once fully implemented, CADE 2, in conjunction with other modernized applications, will enable new online capabilities. For example, it would allow taxpayers to view their account, and update certain account information directly in real-time. This type of real-time capability is not feasible with ALC code. With ALC code, an update has to go through batch processing and cannot be immediately viewed. Because CADE 2 aggregates all data and will keep track of all transactions on the account, taxpayers will be able to see all their history using IRS web applications, including every transaction that has been posted to their account.

Tax Reform and Taxpayer Service New Hires

Question: If the IRS receives an additional \$77 million to hire 1,000 new customer service employees early in fiscal year 2019, what is the anticipated level of customer service taxpayers can expect during the 2019 filing season?

Response:

Based on anticipated call volume and the requested \$77 million, the IRS will ensure that a sufficient number of CSRs are available to answer taxpayer questions, including those related to the new tax law. In addition, the IRS will answer tax reform tax law questions year-round, not just during filing season. If funded at the same level as FY 2018, and we receive the additional tax reform funding, we plan to deliver an 80% toll-free level of service for the filing season.

Question: What is the IRS's hiring plan for onboarding these new staff?

Response:

We are hiring CSRs this year so we can be ready to answer taxpayer questions including those related to the new tax law. The planned start date for most of these new hires is October 2018.

Because of the time to onboard and train new hires to be ready for filing season, we are hiring the additional employees (along with annual attrition hires) with start dates in October.

Question: Can the IRS guarantee that these 1,000 individuals dedicated to assisting U.S. taxpayers will be trained and ready to provide quality customer service during the 2019 filing season?

Response:

The IRS will ensure that all CSRs and all assistors in our Taxpayer Assistance Centers will be trained and able to provide quality customer service for the 2019 filing season.

Question: Can you guarantee that the IRS will be responsive to our constituents?

Response:

We plan to train all new hires to respond to frequently asked taxpayer questions such as refund status, transcripts requests, individual and business tax topics, and how to find information on IRS.gov. In addition, we will train experienced employees on tax reform and tax law inquiries. We will constantly monitor the service being provided to taxpayers for responsiveness and quality.

Improper Payments

Beginning in FY 2017 the IRS held all refunds for taxpayers claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC) until mid-February so that it could perform a systemic verification of wages and other information before issuing refunds.

Question: What is the impact this has had on the 2018 filing season?

Response:

This year, the earlier availability of Form W-2 data enhanced the IRS's defenses against identity theft and refund fraud. The IRS has conducted systemic verification of information reported on taxpayers' returns against previously reported third-party information before issuing refunds. In addition, the IRS is utilizing the earlier-filed Form 1099-MISC for non-employee compensation information as a variable in the filtering process, though not all institutions and employers met the reporting deadline.

In filing season 2018, the IRS held 9.4 million in refunds (with \$46.9 billion of those refunds claiming the Earned Income Tax Credit (EITC) and/or the Additional Child Tax Credit (ACTC)) until February 15, 2018, as required by Section 201(b) of the Protecting Americans from Tax Hikes (PATH) Act of 2015. This represents about 23 percent of the returns received through that time. Unless the return was selected for a pre-refund compliance review in the Integrity Verification Operations, these refunds were released February 15, 2018.

Question: What improvements were implemented over the last filing season to improve the verification process of these credits?

Response:

The IRS implemented new filters leveraging the earlier availability of the information returns and the systemic verification functionality in the Return Review Program. These new filters detect returns with false or incorrectly reported income or withholding for returns with EITC and/or ACTC. Filters also detect returns where the IRS could not verify income or withholding.

Question: Is there any indication that there will be a reduction to the improper payments from the 2017 to 2018 filing season?

Response:

It is too early to determine this with certainty as the IRS is still processing and analyzing data from the 2018 filing season. The earlier availability of third-party data enhanced the IRS's defenses against identity theft and refund fraud. In addition, this filing season, the IRS leveraged both the Return Review Program and the PATH Act refund hold to automate and expand the selection of potentially fraudulent returns. Through February 15, the IRS identified approximately 312,000 PATH Act returns claiming EITC or EITC and ACTC with potential issues with overstated income or withholding. Some employers may submit their information returns after January 31. If the IRS received information to verify return information after holding a refund, the refund was released. Those returns that remained unverified will require an examination.

Because of the complexities in the EITC statute, particularly the eligibility requirements, the IRS has been able to make limited progress in addressing EITC improper payments. Administering EITC represents a significant challenge for the IRS due to the refundable nature of the tax credits, the lack of correctable error authority to adjust erroneous EITC claims, and the absence of a single comprehensive government database or third party reliable and readily available data sources that we can use to confirm all EITC eligibility requirements. We continue to look for new sources of data and new tools to stop refundable credit improper payments. For example, the IRS has expanded the EITC awareness campaign and hosted hundreds of outreach events; developed an EITC return preparer strategy and conducted hundreds of due-diligence visits, assessing penalties where appropriate; improved the EITC preparer's due diligence checklist; developed the EITC Assistant to help taxpayers verify eligibility; increased coordination with industry and state/local tax agencies; and refined the Return Review Program's fraud detection filters. While the PATH Act may be helping to reduce the number of improper payments, it will not come close to eliminating them.

As stated above, we do not have correctable error authority to adjust erroneously claimed EITC. Therefore, we address these errors through audits, which require significant time and resources. We appreciate the authority to accelerate filing dates for information returns. Still, we need additional statutory authority to increase our success rate in preventing EITC fraud and improper EITC payments. The legislative proposals included with the President's fiscal year 2019 Budget would help by giving the IRS the expanded authority to use correctable or math error authority to correct more errors on tax returns, including claimed EITC, before refunds are issued. Additionally, the proposal to increase the IRS's oversight authority over paid tax return preparers would help reduce unscrupulous tax return preparers filing erroneous and fraudulent EITC

returns. The most significant challenge, however, in reducing improper EITC payments is in the design of the statute and the inability of the IRS to validate the eligibility of a taxpayer to receive the credit claimed, e.g., residency requirements and relationship requirements.

Appendix

Release Plan / Project Summaries

CADE 2 TS 2 will be delivered in the following six releases. * Each project supports one of three TS 2 goals: IRE, ADS and FMW.

Release*	Status	TS 2 Goal	Project Name and Summary
1.0	Deployed Q1 2015	FMW	Penalty & Interest – Improves the accuracy of P&I calculations by resolving internal control deficiencies that exist within the common P&I code (FMW 1).
	Deployed Q1 2016	FMW	Pending Payment Transactions – Improve accuracy of financial reports by including pending payment transactions in the unpaid assessment balance. Existing Reports are modified in Release 2.0.
	Deployed Q1 2016	FMW	Penalty & Interest Adjusted Refundable Credit – Corrects Failure to Pay Penalty computations for adjusted refundable credits which resulted in 8 million tax modules with inaccurate computations (FMW 1, 2, 3). Results in changes to the common P&I Code.
2.0	Deployed Q1 2016	ADS	Database Conversion – CADE 2 will begin performing annual maintenance on accounts, eliminating the need to re-initialize the database each year. This allows the CADE 2 database to maintain history tables for auditing and analytical purposes. Database conversion will result in changes to the CADE 2 database and IEAC / daily updates ETL solution components.
	Deployed Q1 2016	ADS	Feed to IPM Phase 1 – Establishes an interface from the CADE 2 Database to the IRS Data Warehouse (IPM); enabling downstream systems to begin pulling CADE 2 data for financial reporting and analytics on taxpayer accounts.
	Deployed Q2 2017	ADS	Financial Recap Reports 2.0/2.1 – CADE 2 Database enhancement to generate three financial reports: Controls Recap, Summary Recap, and Detailed Recap.
3.0	Deployed Q4 2017	ADS	Feed to IPM Phase 2 – Enhance CADE 2 to IPM interface and data model to update the CADE 2 Operational Data Store on a daily basis, improve performance, and enable additional reporting capabilities.
	Deployed Q4 2017	ADS	Data Services Framework - The Data Services Framework is a set of sharable and reusable IRS developed common services used to perform data selection, transformation, and output generation. It establishes the framework to provide the CADE 2 data to downstream systems in legacy and modernized data formats.

Release*	Status	TS 2 Goal	Project Name and Summary
4.0	Deployed Q4 2017	ADS	Financial Recap Reports Performance Enhancements – Expands upon the goals of the FRR Release (R) 2.0/2.1 project by improving the system performance and implementing balance and control between the modern and legacy platforms to ensure that counts and amounts are in concurrence.
	Paused	ADS	CFO Critical Reports – Migrates financial and legal interfaces which currently rely on IMF data provided by the 701 program to leverage data provided by the CADE 2 database.
	Paused	ADS	Authoritative Data Source Transcripts – Certain transcripts must leverage the CADE 2 Database prior to the end of Release 5 in order for CADE 2 to become the Authoritative Data Source.
	Paused	ADS	Feed to IDRS – Establishes two interfaces between CADE 2 and IDRS. The first creates the daily TIF extract file to send individual taxpayer accounts to IDRS. The second supports the MFREQ request/response interface to send individual taxpayer accounts to IDRS.

5.0	Paused	ADS	Refunds – Establishes an interface from the CADE 2 database to IMF post-settlement runs which will continue to generate refund files and the Net Tax Refund Report (NTRR). Allows CADE 2 data to be used for refund generation.
	Paused	ADS	Unpaid Assessments (Authoritative Data Source) – The CADE 2 TS 2 UA Project is primarily responsible for modernizing the unpaid assessment system by sourcing the UA data files with CADE 2 data.
	Underway**	IRE	Individual Tax Processing Engine – Establishes the foundation for a modernized tax processing engine by converting the core IMF functions of posting, settlement, and analysis (runs 12 and 15) into Java-based programs.
	TBD	IRE	701 Replacements – Enables the retirement of the IMF 701 extract application by recreating IMF 701 data extracts from the CADE 2 database.
6.0	Paused	FMW	P&I and Credit to Debit Allocations – Allows individual tax assessments to be stored at the assessment level and the allocation of debits and credits to those tax assessments on the CADE 2 Database. Enables P&I common code to correctly calculate and store P&I at the assessment level on CADE 2.
	Paused	FMW	Financial Status & Notice History – Establishes an interface from IDRS to CADE 2 to provide and store financial status and notice history information in the CADE 2 Database, enabling a complete audit history of individual taxpayer accounts. The update will be made as a direct load to the database. The data will be made available to downstream systems. (FMW 4)
	TBD	FMW	Enhanced Unpaid Assessments Reporting (FMW) – Modifies data extracts from CADE 2 to RRACS and FMIS to include additional information related to the Unpaid Assessment FMW. Requires changes to RRACS, CDDb, UA, and other financial systems.
	TBD	FMW	Enhanced Transcripts Reporting (FMW) – Enables the capability for transcripts to contain additional financial status & notice history as well as audit information from the CADE 2 database.

TUESDAY, APRIL 17, 2018.

GENERAL SERVICES ADMINISTRATION

WITNESS

EMILY W. MURPHY, ADMINISTRATOR

Mr. GRAVES. Good morning, everyone. We will call this hearing to order. I would like to welcome the General Services Administrator, Emily Murphy, to the hearing today. Glad to have you. I know this is your first hearing before our subcommittee, but you have been a part of other hearings and you have a great distinguished history of being a part of this process. So you are no stranger, and we know that, and we look forward to spending some time with you this morning.

Last year, we were on a very abbreviated timeline and we expect to do the same this year. We are going to accelerate the timeline, and hope to have things done this year in committee and the House by early summer.

You are a part of that process here. I am going to take a few minutes to share with you some of my thoughts this morning. Mr. Quigley will do the same. We will have some questions for you but look forward to hearing your testimony in just a few minutes.

As I reviewed your request, I was pleased to see that you included funds to help address the land ports of entry backlog that we have all experienced, which is a top priority for many of our members, including Martha McSally in Arizona. We heard from her several times last year.

Additionally, this request builds off the IT investments that we all made as a subcommittee and full committee in last month's government funding bill through the Technology Modernization Fund. This is something we heard about from many members, including Will Hurd from Texas and the majority leader, and members on the other side of the aisle as well.

Cybersecurity is one of my top priorities. I know it is one of Mr. Quigley's top priorities as well. I am interested to hear a little bit more from you on how GSA will use these funds to secure and improve the efficiency of the IT platforms across all the different agencies and different infrastructures we have.

Finally, I want to highlight the committee's commitment to shrinking the Federal footprint, which you oversee, and divesting the government of unnecessary property that is no longer being used. Last month's government funding bill established the Public Buildings Reform Board which will help dispose of underutilized and unused Federal properties. And we would like to hear a little bit more about that today, the implementation of it and how those funds will be used.

With that, I would like to turn it over to Mr. Quigley, the ranking member from Illinois, for any comments he may have this morning.

Mr. QUIGLEY. Thank you, Mr. Chairman. And thank you so much for being here. We appreciate your work and your service. This year, the GSA budget includes significant new spending for construction, and repairs, and alterations. I am pleased to see the proposal for much needed investment in maintenance and improvement projects in light of a massive 1.4 billion backlog of projects currently waiting for action.

I agree with the chairman. I am also interested in learning more about the steps you are taking to reduce unused or unutilized real property, in particular, how the \$31 million request to assist agencies with improving their real property inventory will be used to modernize the Federal real property profile, which has remained unreliable and unusable for far too long.

At the same time—excuse me—I am extremely disappointed and confused as to why the GSA scrapped a decades long plan to build a new FBI headquarters in the DC metro area. After widespread interest by Members of Congress and tens of millions already spent to see this project through, GSA has decided to instead build a new headquarters on its current site. The economic and national security justifications provided by GSA remain insufficient, and I am encouraged that the GSA's inspector general is investigating this sudden reversal.

But until the findings are made public, too many questions remain unanswered. I also remain troubled by the leasing arrangement between GSA and the Trump International Hotel located at the Old Post Office Pavilion. This time last year, I questioned the then acting administration on possible conflicts of interest.

At that time, we were provided with little clarity into how the GSA could have determined that President Trump is not in violation of the Trump Hotel lease, despite the fact that the President will personally profit from the hotel. Because the President overseas both you and the GSA, he effectively became landlord and tenant when he was sworn in to office. This, of course, is prohibited, since the lease agreement clearly states that no elected official of the government of the United States shall be admitted to any share or part of this lease or to any benefit that may arise therefrom.

I remain concerned with the lack of transparency in the GSA's review of the lease terms, as well as your ability to objectively enforce the lease. I look forward to further discussing this very important issue with you today. And thank you, again, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley. Ms. Murphy, it is a delight to have you here this morning to be with this subcommittee. As you can see, there are a lot of subcommittees meeting this morning from our Appropriations Committee, as we are on this accelerated time schedule to get our work done. So, you may see members come and go throughout the morning.

At this moment, if you are ready to give some opening remarks, know that your full statement is already submitted for the record. We look forward to hearing from you this morning and offering some questions a little bit later.

Ms. MURPHY. Good morning, Mr. Chairman, Ranking Member Quigley, and members of the committee. As the new Administrator of GSA, I am grateful for your invitation to testify on the President's fiscal year 2019 budget request for the agency. GSA's mission is to deliver value and savings in real estate, acquisition, technology, and other mission support services across government.

First, I would like to thank the committee for the funding provided in fiscal year 2018. The monies appropriated by this committee will allow GSA to undertake important projects that will improve the security of our Nation's land ports, facilitate critical repairs to our public buildings, enable agencies to modernize their antiquated IT systems, and enhance the effectiveness and efficiency of government through the implementation of shared services and smarter acquisition strategies.

For fiscal year 2019, I would like to first highlight our support for the Nation's Federal infrastructure. Our public buildings serve a critical role in helping agencies conduct their missions. They house over 100 agencies across 422 bureaus, encompassing 371 million rentable square feet.

GSA has a duty to maintain public buildings and ensure they meet modern standards. Unfortunately, our repair backlog is over \$1.4 billion. With the support of this committee, we have an opportunity to change this. For fiscal year 2019, the President's budget request is \$10.1 billion for the Federal Building Fund. Of that amount, GSA is requesting a total of \$2.2 billion in construction acquisition and repairs and alterations to make much needed investments in GSA's owned inventory.

Numerous studies show that housing Federal agencies in owned space is better for the American people. For example, the fiscal year 2019 request includes \$768 million to purchase the lease facility that houses the Department of Transportation headquarters. This will meet the department's long-term housing needs and save lease costs of \$49 million per year.

GSA is also requesting \$70 million for the consolidation program to better utilize Federal space. Since its inception, GSA has funded 78 consolidation projects which, when complete, will result in an annual lease cost avoidance of \$132 million and a space reduction of almost 1.7 million square feet. The fiscal year 2019 request allows provides for initiatives to make the government's real estate footprint more efficient, including funding for implementation of the Federal Assets Sale and Transfer Act and GSA's Real Property Utilization and Disposal Program.

In conjunction with the Modernizing Government Technology Act, GSA is requesting \$210 million for the Technology Modernization Fund. The TMF is an important first step in changing the way the government manages its IT portfolio. It will enhance our ability to protect sensitive data, reduce costs, and deliver services to the public. In addition, GSA proposes a \$6 million investment to support a digital identity management pilot. This will improve the security of citizens' digital interactions with government agencies.

To promote an efficient and effective Federal Government, the fiscal year 2019 request proposes \$50 million to improve the Federal Government's ability to recruit and retain top talent and reskill the workforce to meet 21st century needs by providing one-

time funding for targeted workforce initiatives across the government. GSA will continue critical government-wide policy activities, including supporting coordinated regulatory review processes with the agencies in the public, managing the government-wide guidance, such as the FAR and the Federal Travel Regulations, and delivering important information to decisionmakers, including through the Federal Real Property Profile.

The request also provides \$2 million for the activities of the Office of Shared Solutions and Performance Improvement. This will support management in oversight of high-quality, high-valued shared services that improve performance and efficiency throughout government. As a lead for the Shared Services Initiative and the President's Management Agenda, I am also pushing all of GSA to identify ways we can better support shared services across government.

The funding that this committee invests in GSA is essential. It supports the programs and activities that allow agencies to focus and deliver on their core missions. I look forward to working in partnership with this committee, thank you for the opportunity to appear before you today, and I am happy to answer any questions you may have.

Mr. GRAVES. Thank you very much. This morning, I want to pass on any questions of my own in the beginning and go to Mr. Quigley, if he has any questions first. And if not, I would go to Mr. Bishop. Mr. Bishop, you are recognized, and then Mr. Moolenaar would be next, if he is ready for any questions.

Mr. BISHOP. Thank you very kindly, Mr. Chairman and Mr. Ranking Member. And welcome to you, Ms. Murphy. Let me get right to it. The Federal Assets Sale and Transfer Act of 2016 requires GSA to establish a publicly accessible database with specific information about each property. And the GSA has published a data set with much of the required information. However, the data on utilization rates is incomplete, as no data is yet available on annual operating costs.

I would like for you to tell me whether or not GSA has a timeline for when the data set will include all of the information that is required by the Federal Assets Sale and Transfer Act. And secondly, the real property management has been on the Government Accountability Office's high-risk list since 2003. The ongoing issues identified by GSA is the fact that GSA only lists warehouses as unused if they are in the process of being disposed.

As a result, GSA listed as used some warehouses that have been vacant for many years. GSA indicated that it was developing a guide for strategic warehouse planning that might address this concern. Could you tell us whether GSA has completed this plan; if not, is there a timeline for the completion?

And the third question is the omnibus for 2018 provided \$100 million for the Technology Modernization Fund. This is less than the \$228 million that the administration requested. So, I would like for you to address what your priorities will be to be funded with the 2018 appropriation.

Ms. MURPHY. Thank you, sir. I appreciate the questions. If I could start with your question on the Federal Real Property Profile? As required by law, GSA published the first version of the

data for fiscal year 2016 in December of this year. We published the updated data in March of this year. So, we have the 2017 data as now available.

We are working very hard with our agency partners to improve the quality of the data. There is a working group right now that is working to first improve the search capabilities and then we are also looking at providing geolocation data, as well as trying to improve the accessibility of the utilization rates and the utilization data, because we understand this is an important tool for policy-makers such as yourself.

Your second question, I believe, dealt with the issue of the high-risk list. And the high-risk list is one of my top priorities. I have been meeting with the comptroller general. He has been kind enough to agree to meet with me every other month, so we can really dig down into these areas. I also hired someone who came from an I.G.'s office who is coordinating GSA's response to both the management challenges and the high-risk list to make sure that we are not seeing those just as a paper exercise, but that we are looking at those as systemic issues and really looking at them as ways we can improve the direction of the agency and live up to our mission of delivering value.

I have to confess that I am not aware of the warehouse issue. I would like to take the opportunity to go back to my staff and find out an answer for you so that I make sure that I give you the correct information. And your third question, I believe, dealt with the Technology Modernization Fund.

And so, in terms of the Technology Modernization Fund, first GSA is very grateful for the \$100 million that this committee arranged to have appropriated as part of the fiscal year 18 appropriations bill. And GSA serves as the custodian of those funds, and we are a member of the board that makes the decisions. The board is meeting once a week now and is reviewing all of the plans that agencies have submitted for ways that they can address technology modernization requirements.

Specifically, they are looking at technology that can be leveraged across agencies, so it is not just a one-time fix. It is something that we get long-term return out of. That it is not a new issue. It has got to be an identifiable issue that we can really address. And we have been working very hard with them to establish that criteria.

Just yesterday, I announced that we have appointed an executive director who is going to help coordinate the technical reviews of those proposals, as well as the fiscal and business reviews of the proposals, to make sure that the dollars spent come back with a return on investment, that they are able to repay the fund, and continue that cycle of reinvesting. That is part of the reason GSA is requesting another \$220 million this year, as part of our fiscal year 2019 request. This is the last year that we are authorized to request funds for the fund.

But given that the Federal Government spends about 90 billion a year on IT and IT services, and we have a demonstrated need to do a better job in managing and addressing those services, I will give you an example. In GSA, I have 173 systems that support the Federal Acquisition Service. That is down from over 7,000 the last time I served at GSA.

So, GSA has made an important commitment to reducing those systems. However, many of them still use COBOL as the underlying programming language. In doing so, that creates the number of systems drive processes that create barriers to entry for small businesses, which is something I take very seriously. But they also create barriers to access for customer agencies that want to access our contract vehicles. And more importantly, they also drive business processes that are outdated and do not best reflect our ability to deliver value to taxpayers. So, trying to make sure that we invest in those areas and really do a better job at understanding that our ultimate customer, the taxpayer, is served is one of my top priorities.

Mr. BISHOP. With the Technology Modernization Fund, are you prioritizing, also, security measures for your IT?

Ms. MURPHY. GSA is indeed prioritizing security measures. We spend about 7 percent of our IT funds on security right now, including support for the public key infrastructure across agencies. GSA is having action items under half of the recommendations to the President in the report on technology modernization. We are supporting DHS in its work on helping smaller agencies address their cybersecurity initiatives. And we are also, through our data center consolidation initiatives, not only saving taxpayer dollars but helping agencies improve their cybersecurity and their security posture.

Mr. BISHOP. Thank you. Thank you very much, Ms. Murphy.

Ms. MURPHY. Thank you, sir.

Mr. GRAVES. Thank you.

Mr. Moolenaar.

Mr. MOOLENAAR. Thank you, Mr. Chairman. Thank you for being here, and your testimony. In the last 3 years, this committee has funded the construction of 13 Federal courthouses, addressing what was a longstanding backlog in courthouse construction. However, in the same time, funding was provided for only three land ports of entry. And I wondered if you could speak to the need for construction funding for our Nation's land ports of entry, and is this a priority, as well as how closely does GSA work with Customs and Border Patrol on identifying project and funding needs for land ports of entry.

Ms. MURPHY. Thank you, Mr. Moolenaar. GSA works very closely with CBP. We each year sit down with them; we have a list of their ongoing requirements, but each year we sit down and try to reprioritize those to make sure that we are addressing their most pressing requirements as we are formulating our budget requests. This year, I know that we have got a request in for funding for the Calexico land port of entry for phase 2. I know that last year we were grateful to the committee because it did provide funding for two of the land ports of entry.

That said, I know that we have got a backlog on land ports of entry. I believe in your district we have got the Sault Sainte Marie port of entry, and we are closely monitoring the situation there and trying to work with CBP, and hopefully with this committee, on ways to address that.

Mr. MOOLENAAR. Just on that note, I did last year visit Customs and Border Protection's station in Sault Sainte Marie, and at that

point, it was No. 21 of 71 on DHS's priority list. And it is a leased building, an old grocery store built in the 1950s, with many safety and security insufficiencies. For example, asbestos is prevalent throughout the building, there is no fire suppression system, and the building did not even have smoke detectors until last year. And to my knowledge, the lease on this building, which is set to expire in October of 2018, has yet to be evaluated.

And I am just wondering, since the building is leased by GSA, does GSA or DHS have the responsibility to evaluate the safety and security of the building? I just wonder, how does GSA ensure that the managed facilities are safe and secure working environments?

Ms. MURPHY. Thank you, sir. It is actually a shared responsibility between GSA and the Department of Homeland Security through the Federal Protective Service. It is actually the issue I believe that your colleague Mr. Bishop was asking about the GAO high-risk list. This is an area where GAO has specifically drawn GSA/DHS's attention to the fact that we need to do a better job of coordinating the security assessments that the Federal Protective Service, within the Department of Homeland Security, does with the work the GSA does on physical security, and that is one of my priorities.

I have met with the Department of Homeland Security about ways we can address the issue. I hope to be making progress on this, but I understand that, you know, there are substantial issues there that we need to address as part of the lease renewal. Actually, there is also a wall in Sault Sainte Marie that is in a phase of starting to collapse and that we need to make sure that is addressed so that it continues to serve its important purpose of actually facilitating the border crossings.

Mr. MOOLENAAR. So, can I use a baseball analogy? Do you like baseball?

Ms. MURPHY. I am a Cardinals fan.

Mr. MOOLENAAR. You are? OK, good. Well, you will get this. So, you know, in baseball, when there is a pop-up fly ball, you know, you have got two fielders running to it. One of them has to make the call and, you know, not kind of go back and forth. And I guess I am wondering, in this case, who ultimately makes the call?

Ms. MURPHY. Ultimately, GSA will either award or recompet the lease, so that part of it will be our call. The program requirements will always be—and whether the building meets those program requirements—CBP's call. And I know that that sounds like a terribly bureaucratic answer, or perhaps maybe a lawyer answer, where I am just pointing back and forth, but statutorily, that is how the responsibility has been set up. And so, it does require that important level of coordination between the two agencies. I actually met with the former Deputy Secretary of DHS recently, and this was one of the issues that we discussed; how we can do a better job here.

Mr. MOOLENAAR. OK. And I appreciate that you brought up Sault Sainte Marie, and I would say it is on your radar screen.

Ms. MURPHY. It is.

Mr. MOOLENAAR. So, thank you for that. With that, I yield back, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Moolenaar.

Mr. Quigley.

Mr. QUIGLEY. Thanks, Mr. Chairman. Thank you so much for being here and, again, for your service. To your knowledge, when did the administration make the decision not to build the suburban FBI facility and instead rebuild where it is?

Ms. MURPHY. Thank you, sir. It is my understanding—and, again, I was confirmed in December of last year, so I want to be clear that I was not involved with many parts of this decision, but I am going to try and answer your question as fully and completely as possible—that last July the GSA and the FBI, working with OMB, reevaluated the lease exchange that had previously been proposed for building a new FBI headquarters and prioritizing the need that there was a new FBI headquarters that is absolutely required.

EPW, the Environmental Public Works Committee—forgive me—asked GSA and the FBI to go back and provide them with a report, a plan, on the alternatives, given that it had also been 14 years since the original program requirements had been developed.

Mr. QUIGLEY. Before you go there, who briefed you on this to catch you up?

Ms. MURPHY. The Commissioner of the Public Building Service and some of the individuals within the National Capital Region provided me with the details of the history of the program, and then I also spoke with the director of the FBI.

Mr. QUIGLEY. Was anyone else at the White House involved with briefing you? Or, to your knowledge, did the President or any of the other officials at the White House consult with any of these agencies in the decision-making process?

Ms. MURPHY. Sir, the FBI came to me and said that their requirements had changed. They no longer required a campus for 11,000 individuals. They were looking at a campus, and they only had a requirement for about 8,300 individuals. And based on that, they wanted to put the J. Edgar Hoover site back into play. They actually requested that GSA consider renovating the building.

In my conversations with GSA, and then with the FBI, we pushed back and did not believe that that was the right answer. We thought that the renovation of the building was a point to address the setback issues, and, frankly, given that it uses something called post-tension cabling to support it, that any hardening we tried to do with the building would not be successful. And it would be a long-term project that put the FBI's mission at risk.

So, GSA then suggested that instead, if the requirement was to stay in proximity to the Department of Justice, and that location worked, and it had the infrastructure in place, that GSA proposed instead taking the opportunity to demolish the current FBI headquarters and rebuild on that site something that had the setbacks, that could have hardening, that could meet the requirements of the FBI for that new reduced headcount.

Mr. QUIGLEY. But, again, to your knowledge, was the President or anyone at the White House involved in those discussions, either with your predecessors or people you are working with now or yourself?

Ms. MURPHY. Sir, to my knowledge, the direction that we got came from the FBI. It was the FBI that directed GSA as to what its requirements would be. Given that it is a substantial budget request, we coordinated that request with OMB to provide for funding, but the requirements were generated by the FBI.

Mr. QUIGLEY. So, correct me if I am wrong. I am looking at a spreadsheet that talks about the differences. Full consolidation; new campus—and, again, it shows 11,000 workers, but I understand what you are talking about—versus the rebuild of 8,300 workers. The rebuild I am showing at \$5.180 billion, and the new campus at, roughly, a little over \$4 billion. Are those numbers accurate, to your knowledge?

Ms. MURPHY. Those are not the numbers that I am familiar with, and so I am not sure of the spreadsheet you are using. I would be happy to have someone come in and walk you through all the numbers, though.

Mr. QUIGLEY. So, what is your understanding of the numbers?

Ms. MURPHY. Between GSA and the FBI, we currently have about \$700 million that has been appropriated for new headquarters. We have requested another \$2.2 billion. It was first requested as part of the 2018 ad-back through your sister subcommittee with CJS last year. This year, we have requested instead \$200 million to be used as a payment towards a civilian building fund that is being proposed as part of the new basis for the infrastructure environment; over \$2.2 billion.

Mr. QUIGLEY. I am sorry, I do not mean to interrupt, but I am just short on time. I want to take into consideration what we are hearing is a \$479 million cost for swing space, right? Moving everybody out and back in, which has other issues. And if we need to go back to the next round, Mr. Chairman, that is fine to do this. Does that take into consideration with your figures? And also, what is your complete understanding of the total cost, new construction versus rebuild?

Ms. MURPHY. I do not have the specific numbers in front of me. This is too important for me to get it wrong, so I want to make sure I get it right. And I have asked the question directly that the numbers that we proposed as part of the 2018 ad-back and then the \$2.2 billion, including the \$700 million that has already been appropriated, do indeed include the swing space for the FBI employees.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley. I am going to ask a couple questions and then go to Mr. Cartwright. Callexico—is that the administration's top priority in terms of land ports of entry right now?

Ms. MURPHY. That is our top priority for fiscal 2019, sir.

Mr. GRAVES. OK. On to construction projects. The administration transmitted \$3 billion in new construction and major repairs requests in the fiscal 2018 addendum to the budget request. The funding bill we enacted provided for several courthouses and one land port of entry. So, looking ahead, in 2019, of all the projects that were not included, how do you prioritize those projects in the 2018 addendum and 2019 request?

Ms. MURPHY. Thank you, sir. As you know, the 2018 addendum was formulated at the same time we were formulating the 2019 request, so it was an interesting balance for the two. But each year, we sit down with our partner agencies. We make sure we understand their priorities. We have an ongoing list of needs, but we each year revisit those needs to make sure that, you know, do any of them need to be escalated?

Can any of them step back in exchange for another? What are the current priorities of our customer agencies? And then we propose those as part of the President's budget. I do want to say thank you for the three courthouses last year and the two land ports of entry you provided us. We are very grateful, and we have already started getting to work on those.

Mr. GRAVES. Thank you. Back to the FBI headquarters, when will there be an updated prospectus and justification for the requested funding level?

Ms. MURPHY. Sir, I met with the Commissioner of the Public Building Service yesterday about the steps that are being taken to prepare that. We are working on it. We are working with the FBI and OMB on trying to make sure that we are moving forward with that.

Mr. GRAVES. So, no specific timeline?

Ms. MURPHY. I made a commitment, at one point in time, that we were going to meet the deadline for the report that was promised by the Deputy Commissioner of the Public Building Service in August, and we missed that. And I do not ever want to miss another deadline. I take it very seriously. I spent 9 years as a Hill staffer. When people promise you a deadline, you had better be able to back it up. So, I want to make sure that we are working on it, and I am happy to give you progress reports. I do not want to commit to a specific deadline if I am not positive that I can make it.

Mr. GRAVES. I understand. Knowing the accelerated timeline we are on as a subcommittee and full committee, and the questions you have from the ranking member and myself and, I imagine, some other members as we look ahead, it is probably good to have that report sooner than later.

Ms. MURPHY. Yes, sir.

Mr. GRAVES. And then, lastly, before going to Mr. Cartwright, in the 2018 funding bill that we just enacted, we had \$5 million in funding for the Asset Proceeds and Space Management Fund. You addressed that earlier in your opening comments, because this subcommittee is about reducing the footprint of the Federal Government as much as we can and doing away with unused properties. Can you just give us a quick little update on that?

How will you use funding that we provided you in 2018? And as far as standing up the board, when do you see it up and running? When do you expect the fund will begin implementing the board's recommendations? When will we begin seeing that reduction? There is strong interest, particularly from Mr. Denham from California, in this effort here.

Ms. MURPHY. First of all, thank you for the funding as part of 2018. We are holding that money. We have worked with the Office of Management and Budget to make sure we have all agreed upon

the criteria that the board will be using, that we have got the data in place for them to be assessing.

We have gone out with two data calls to agencies to make sure that they have already gone and identified properties and that we are ready as soon as—obviously, the chairman of the board needs to be confirmed by the Senate, and the other six Members are presidentially appointed in consultation with the Speaker of the House and the minority leader, sorry, the Senate majority leader and the Senate minority leader. So, as soon as those individuals are in place, we are ready to go.

I think that because we have done so much preparatory work, they should be able to hit the ground running. And so, we see the, you know, initial funding helping support their initial analysis in the contracts, and the additional funds would be to do the necessary environmental remediation or adjustments so that we can get the full value or we can get the best value for those properties that we are auctioning off, or for the consolidation efforts that the board is going to be undertaking.

In my confirmation hearings, I had to say that we had 372 million square feet of office space. I can now say that we have 371 million square feet of office space, and I want to see that number go down. I have been meeting with each of the Cabinet Secretaries or their deputies to actually talk to them about their utilization rates, so I can get a commitment from the top that they are going to work with me to push those numbers down, so we can deliver a better value.

Mr. GRAVES. Thank you for your work on that. It is not too uncommon for us to hear that someone is waiting on the Senate. We hear that quite a bit. Mr. Cartwright, and then Mr. Amodei.

Mr. CARTWRIGHT. Thank you, Mr. Chairman, and welcome, Administrator Murphy.

Ms. MURPHY. Thank you.

Mr. CARTWRIGHT. On behalf of the subcommittee, I apologize for Mr. Moolenaar's using a baseball analogy. For anyone from Michigan to represent that they know anything about baseball when the Tigers are four and nine is a blatant misrepresentation.

But I wanted to ask you a little bit about the Inspector General. Of course, we have inspectors general in the Federal Government, and they act as watchdogs over the agencies, and GSA is no exception. Right? You guys have an inspector general, right? GSA's Inspector General recently issued a report that found that last year, GSA followed a new policy for communicating with Congress, with us, based on "oral guidance and direction from the White House." And you are familiar with that report, I take it?

Ms. MURPHY. I am, sir, yes.

Mr. CARTWRIGHT. According to the Inspector General for GSA, the new policy prohibited responding to "oversight" or "investigative" congressional inquiries made by Members other than chairmen. GSA officials told the IG that the policy was a change from GSA's prior practice, and the IG reported, "GSA officials stated that the prior practice had been to process all congressional inquiries for a substantive response, while sometimes providing redacted responses or more limited information to Members than would be

provided to chairmen.” First, are you familiar with that, and do you agree with that characterization?

Ms. MURPHY. Sir, I am familiar with the IG’s report, and as I mentioned, I have been on the job now for 4 months. One of the first things that I did was go back and direct that they revise the communications policy to address the IG’s concerns to make it absolutely clear that whistleblowers and others have the right and the obligation to bring forward issues, and that no policy at GSA keeps them from doing so.

I have also used my position as the Administrator to make sure that we are responsive to all Members of Congress. And I think that if you look at the last 4 months, you will see that GSA has been very responsive to any requests we have gotten, whether from a chairman, a ranking member, or other Members of Congress.

Mr. CARTWRIGHT. I do not mean to interrupt you. Are you done?

Ms. MURPHY. Yes, sir.

Mr. CARTWRIGHT. Are you disagreeing with the Inspector General’s statement about what the policy is?

Ms. MURPHY. I believe that they are referring to a policy that was in place last year. I have issued a new policy and made it absolutely clear and have also testified to this policy in front of the Oversight and Government Reform Committee that GSA will be responsive to all Members of Congress.

Mr. CARTWRIGHT. Now, is that a written policy or an oral policy?

Ms. MURPHY. There is a written policy that addresses how we respond to Members of Congress. I spent 9 years as an Oversight staffer. And I had the experience of asking GSA for information and not getting my call returned, or not getting the information sent back to me, or waiting on a letter, or waiting on a report. And when I showed up at GSA, one of my first questions was, “Do I now get the briefing I have been asking for?” So, I do not want to ever put anyone else in that position. I want to be as transparent as possible and provide you all with the information you need to do your jobs.

Mr. CARTWRIGHT. OK, so that is a change from policy, which would have prohibited responding to oversight or investigative inquiries. Is that correct?

Ms. MURPHY. I am not sure that I would characterize the original policy as prohibiting response, but I wanted to make it explicitly clear that GSA responds to requests, yes.

Mr. CARTWRIGHT. Well, that was how the IG characterized the prior policy. And you are saying that has changed now.

Ms. MURPHY. And that has changed.

Mr. CARTWRIGHT. OK.

Ms. MURPHY. And I believe if you talk to any of our oversight committees, they will tell you we have been trying diligently to make sure that we are responsive.

Mr. CARTWRIGHT. The IG reported on May 19, 2017, the White House provided GSA’s Associate Administrator for the Office of Congressional and Intergovernmental Affairs written guidance on responding to letters from Members of Congress. Are you familiar with that written guidance?

Ms. MURPHY. I am, sir, in that I know that there was an additional letter that was provided by Mr. Short to Senator Grassley—

Mr. CARTWRIGHT. Well, stay with me.

Ms. MURPHY. OK.

Mr. CARTWRIGHT. I am talking about the May 19, 2017 written guidance. Will you provide a copy of that written guidance?

Ms. MURPHY. It is not a GSA document, so I want to make sure that I am allowed to provide that. If I am allowed to, then we will work to make sure you get it.

Mr. CARTWRIGHT. But you are saying to us today, no matter what anybody else says, your office is going to be responsive to oversight or investigative inquiries from Congress.

Ms. MURPHY. That is correct. And I believe that Mark Short sent a letter to Senator Grassley, explaining that the heads of agencies have broad discretion, and I intend to use that discretion to be as responsive as possible.

Mr. CARTWRIGHT. Thank you. I yield back, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Cartwright. I think, with Ms. Murphy's extensive background on the Hill, she understands the importance of communication with each and every office. She has got great, great history, and a legacy. Mr. Amodei, and then Ms. Herrera Beutler.

Mr. AMODEI. Thank you, Mr. Chairman. Welcome, Madam Administrator.

Ms. MURPHY. Thank you, sir.

Mr. AMODEI. I am not going to take much time. I just wanted to use our time here today to let you know that I want to get on your staff's calendar to get sort of an in-depth briefing on the little bit that you do in northern Nevada.

My understanding is that your holdings consist of a couple courthouses and a Federal building that are in kind of the urban area of my district. And so, I just kind of want to get with them to say, "OK, here is what we have got. Let's make sure we know what we have," and then to see what is going on.

I think your regional office is probably located in San Francisco for that area. But to talk about what the plan is, if there is any, in terms of how GSA stays nimble in terms of those areas where it owns square footage and also is at least open-minded to opportunities to upgrade or modernize. Because one of them is a fairly new courthouse, which I am sure is probably OK; but another Federal building and another older courthouse, whether there are asbestos issues in those buildings, and the operational type of stuff.

So, I would like to use that time with your staff to go, "So, what is the usual policy in terms of assessing where our properties are, what they are in terms of—I know there is square footage and the rental income. But what is the state of the building? And then, also, to see what, if any, there is any medium- or long-range plan for GSA operations in western Nevada, in this instance. So, I am assuming that that is just a matter of getting a hold of whoever your liaison is and getting with the right folks. And we will come to you.

Ms. MURPHY. Yes, sir. And I believe you are right: We are three Federal buildings in the Second District of Nevada. We have got a

1995 courthouse, which I think is the largest of the properties, in Reno. There is another Federal building in Reno as well, and then there is a third building that I believe is in Carson City that is smaller. The second building in Reno is from 1965, and the other building is, I think, a 1970s building.

So, yes, we do an evaluation of those buildings every year. I would be happy to give you an in-depth briefing on how we look at them and the long-term strategy as we look at our overall portfolio.

Mr. AMODEI. OK, great. Thank you. Thank you, Mr. Chairman.

Mr. GRAVES. Ms. Herrera Beutler, and then Mr. Young next.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman. Thank you, Ms. Murphy, for being here with us. I was happy to see that you addressed the Technology Modernization Fund in your opening comments. Modernizing our government IT infrastructure to be more secure, more cost-effective, more efficient, more streamlined, especially as we expand our digital platforms, is critical. I mean, we often compare it to the private sector, and it is a challenge.

Now, I understand you have named the members of the Technology Modernization Board and sent initial guidance out to eligible agencies. And since we just approved \$100 million for the Fund in the 2018 Omnibus, I have a few questions. And I understand that Mr. Bishop asked about priorities and prioritizing security, so I am going to skip to my second there. Given your strong mission focus on improving citizen services and increasing the effectiveness of government operations, how do you anticipate using TMF funds to help enhance delivery of citizen services? And is improving mission delivery a priority for this TMF funding?

Ms. MURPHY. Thank you very much, Congresswoman. You are not going to remember me, but I had the privilege of staffing you when you were on the Small Business Committee years ago.

Ms. HERRERA BEUTLER. Oh, my heavens. Years ago, because I am so old now.

Ms. MURPHY. No, no. I think Jessica Wixon was your staffer at the time.

Ms. HERRERA BEUTLER. Yes, she just left. I am brokenhearted.

Ms. MURPHY. She was wonderful. I very much enjoyed working with you back then.

Ms. HERRERA BEUTLER. Good.

Ms. MURPHY. So I look forward to the opportunity to do so again. GSA appointed the Commissioner of the Federal Acquisition Service, Alan Thomas, as GSA's representative. There are representatives from other agencies as well that have been appointed. Citizen services; GSA is the custodian of the Federal Citizen Services Fund, so it is something we take very seriously, and we work very hard on.

Furthermore, since I have come into office, we have created a center of excellence that actually focuses on citizen services and is working with the U.S. Department of Agriculture on how we can improve citizen services for them. I spent some time with them, actually, in Kansas City, meeting with farmers on the challenges that they are facing in terms of the outdated technology that the USDA is using and how we can leverage that. I believe that USDA, among others, are going to be submitting business cases to the TMF that

will allow for the improvement of those citizen services. I will give you an example.

There was one wonderful woman who was a farmer there who was telling us the story of her tractors; actually talk to satellites and can tell you exactly how many acres have been plowed. And then they have to transmit that data, though. They have it themselves. When they go to get crop insurance or deal with USDA, USDA uses old paper maps that are not nearly as accurate. And so, how can we improve that process? We also heard about two different offices that require the same data in different formats, and both required paper. So, it takes them an hour and a half to go each way. So, how can we improve that process?

And I think that there are simple, low-dollar value approaches we can work on there, and I think that one of the great uses for the Technology Modernization Fund would be to invest in citizen services, especially in a way we can leverage across other agencies.

Ms. HERRERA BEUTLER. How often do you find that two or three or multiple agencies are requiring different technology and in paper form? You know, it is basically conflicting. How often do you find that?

Ms. MURPHY. Frequently, actually. And so, I had a conversation with one Cabinet Secretary who was telling me about a challenge he had where his agency is required to receive paperwork that then has to be Fed-Exed back to the person who sent it to them, who then has to send it to another agency, who then sends it back to them, who then sends it to a third agency, who sends it back to them, and asked if we could help them come up with a way that we stop, first of all, the back-and-forth, which is costing small businesses and our citizens a lot of money, but also improve the process and do a better job there. It is also a case inside of agencies as well, though. I saw a great robotics process automation demonstration. I am going to get a little geeky, if that is all right.

Ms. HERRERA BEUTLER. That is fine.

Ms. MURPHY. I saw a great process where a GSA employee, on their own initiative, went and figured out a way that they could take a process that normally takes an hour and bring it down to under 20 seconds. And we are looking to see if this is something we can replicate, but if it is, it means I can use my contract specialists to be working on higher-value ad, better interaction with citizens, better services to other agencies, rather than doing paperwork and data entry, which is—I think one of the great tenets of the President's management agenda is looking at high-value work rather than low-value work, and how do we move the talented men and women who work for the Federal Government to that high-value work.

Ms. HERRERA BEUTLER. That is good. I appreciate it. In the last 15 seconds, your 2019 budget proposal included a request for \$210 million for TMF. Given the complexity of kind of what you just discussed, and Federal IT needs, and the need to modernize, is \$210 million sufficient?

Ms. MURPHY. I think so. This is a proof of concept, and this is the second and last year we are allowed to ask for appropriations under the legislation, so we are asking for the \$210 million. That would give us a total of \$310 million. It is a revolving fund; it al-

lows us to go and make targeted investments, get the return on those dollars, reinvest them into the next set of projects, and have this as a continual improvement process.

It also should highlight areas where we can get demonstrable savings, and then agencies can themselves come back and ask for additional appropriations as necessary.

Ms. HERRERA BEUTLER. Got it. All right. I yield back. Thank you.

Mr. GRAVES. Mr. Young, then Mr. Quigley.

Mr. YOUNG. Thank you, Mr. Chairman. Administrator, welcome.

Ms. MURPHY. Thank you, sir.

Mr. YOUNG. I appreciate your pledge to be responsive, having been on the other side as a staffer in the oversight process. Myself, having been a staffer as well—and regardless of who is in the White House, Republican or Democrat, it gets frustrating, so I appreciate your pledge to be responsive.

How do we get a list of all the GSA properties in our districts? Is there a magic website somewhere that we have not found yet?

Ms. MURPHY. There is. There actually is.

Mr. YOUNG. This is a great day.

Ms. MURPHY. I am happy to give you that list. I am also happy to have someone pull the data for you. There is a Federal real property profile database, and for GSA properties, it will not only give you a list, but it will actually do geolocation for you. So, it will, you know, show you on a map where they are as well.

Mr. YOUNG. So, with those properties, will it tell us how long those properties have been under the management of GSA, ownership of GSA and the Federal Government?

Ms. MURPHY. I believe. I want to be careful, but I do believe that it does have the age of the property as one of the factors. For GSA, some of those date back to 1949, when Harry Truman signed GSA into being, but some of the properties themselves are older than that.

Mr. YOUNG. What is the process when GSA takes a look at that list and says, “I do not know why we still have that; the community and the public may have a need for this”? What is that transfer like? What is that process like? How long does it take?

Ms. MURPHY. First, to identify the properties, GSA works with other Federal agencies, because usually—it is rare that it is just GSA occupying a space. It is usually other Federal agencies in that space. If those agencies tell us they no longer have a need for the space, or we can work with them on consolidation so that we can free up that space, we will then make it excess.

Excess property we turn around and we offer to other Federal agencies first, and then, if they are not willing to purchase the property from GSA, we will then declare it surplus. Surplus property; we then go through a screening process where we look at whether or not State and local governments or qualified nonprofits, especially those helping the homeless, are interested in the property.

Generally, once we have cleared title on the property, which can sometimes be very complicated, and dealt with environmental issues, it takes us about a year to dispose of it, which is one of the reasons I am very grateful that Congress, in 2016, passed FASTA, because that gives us the opportunity to pilot an expedited dis-

posal, so we can see a faster return on those underutilized properties and turn them into funds that can actually support ongoing operations.

Mr. YOUNG. Great. I know the GSA is currently attempting to acquire land in Des Moines for a new courthouse. I would just urge you—whether it is Des Moines or any other municipality or city—with that process, to make sure that you are always informing the constituents, the people in those areas, about the process, what you are looking at, public comment, those kinds of things. Because it did not start out that way with the Des Moines courthouse, and we kind of had to rattle some cages here with GSA to make sure that the public was being informed and that the city was being informed about the process and what was being looked at.

It is just good to build that relationship, to build that trust, to make sure people's voices were heard. Not everybody may agree with the end result, but they can agree that a process went forward that was fair and where people were heard. So, I would just urge you to continue to do that or make that a policy.

Ms. MURPHY. Sir, one of my four priorities is transparency. As I said, ethical leadership, increase in competition, reducing duplication, and improving transparency. I want to make sure we are as transparent as possible in dealing with communities, with stakeholders. I know that there was a meeting last week that I believe one of your staffers and many of your constituents attended dealing with the courthouse in Des Moines, and I look forward to continuing to work with you to make sure we get to the right result.

Mr. YOUNG. Thank you for that. And then, finally, public benefit conveyance. There are certain qualifications a State or local government and nonprofits must meet for public benefit conveyance. Sometimes this is for educational purposes, parks, recreation, homelessness assistance, and those kinds of things and more. But there was recently a case in the Third District I represent where a transportation company was not allowed to receive a public benefit conveyance because public transportation was not considered a public benefit.

Can you think of any good reason why that would not considered a public benefit, and if you would be opposed to any kind of movement to consider public transportation within the definition of public benefit? And if you would, could that be done internally, or is the onus on Congress to make that fix?

Ms. MURPHY. Sir, I appreciate you bringing it to my attention. I would really like to learn more about this and where the definition of public benefit came from. Before I make any commitment, I want to understand what the statute says—

Mr. YOUNG. Fair enough. Thank you.

Ms. MURPHY [continuing]. And make sure that I give you a complete and thorough answer.

Mr. YOUNG. We will connect our staffs together.

Ms. MURPHY. I would love to work together, yes. Thank you.

Mr. YOUNG. Thank you. And I yield back the last—well, I do not have any time left. Thank you, Mr. Chairman.

Mr. GRAVES. You always have more time. Mr. Quigley, and then Mr. Stewart.

Mr. QUIGLEY. Thanks again, Mr. Chairman. I have got to tell you, this question would be a lot easier if you were not so nice and apparently conscientious, and I appreciate your wanting to get back. But I think these are fair questions, and I would at least like your reaction. But I appreciate your service, and I want you to know that I think that we need to do these things on an ongoing basis, because circumstances change.

I mean, currently, I believe the President owns about a 77 percent interest in the Trump hotel lease. That arrangement seems to allow the President to invest today's profits into the hotel and then receive profits after he leaves office. And given who can use that facility, it opens up, if not real, the possibility of conflicts. And it can be, I believe, and is a conflict of interest for the President to appoint the head of an agency tasked with administering that very lease.

So, what analysis was done? What analysis goes on on an ongoing basis to ensure that the contract with the President has not resulted in the President receiving any emoluments from foreign governments? And does the GSA have concerns that it may be administering a contract that violates the Constitution? Again, not just how it got to that point initially, but what it has done since then.

Ms. MURPHY. As you know, sir, last March, a career contracting officer made a determination, supported by other career lawyers, that the tenant for the Old Post Office was not in violation of his lease. Since that time, GSA has cooperated with the Inspector General. We have turned over a large number of documents for their review so that they can do a review of the analysis that took place. There is ongoing litigation that is directly addressing the questions you are raising.

Obviously, we know that GSA is watching those cases very closely, and we are looking to a final determination by the courts. However, given that there is ongoing litigation, it is inappropriate for me to go into, you know, a lot of detail about it. We are watching those cases, and we will obviously follow any final determinations.

Mr. QUIGLEY. But the fact that there is ongoing litigation does not limit, as you would understand, the responsibility to review this on an ongoing basis. You can at least say that you are reviewing the practices on an ongoing basis, correct?

Ms. MURPHY. As the Administrator, I am trying to be very careful to never put my finger on the scale to weigh one contract or another. I believe that it is my job to make sure that we have got the right people and the right processes in the job; that they are being conducted in a transparent process; that if people have concerns with how they are being—those processes are being implemented; that they have the ability to raise those to their supervisors or as whistleblowers; and that we respond to inquiries from committees, from Members of Congress; that we also, you know, work, you know, with the courts as they are looking at important constitutional issues and as they resolve those.

Mr. QUIGLEY. I understand you referenced the Inspector General. But to your knowledge, is there any other process that allows you to take this, again, to some other neutral third party to review, analyze—someone independent, perhaps, to give an opinion?

Ms. MURPHY. For contract administration, we really do not have another option that I am aware of. I mean, GSA is considered to be the expert on the interpretation of its own contracts. That is why we have worked very closely with the Inspector General on that. In cases of litigation, obviously, we defer to the courts.

Mr. QUIGLEY. Let me just go back to the FBI headquarters for a second.

Ms. MURPHY. Yes, sir.

Mr. QUIGLEY. And if you cannot answer any of these, these would be more—I would be appreciative if you could get back to us. The CIA, DIA, NSA, and the Department of Homeland Security; they all have their own campuses to mitigate both physical and espionage threats.

As I understand it, the FBI is the only member of the intel community with its main campus located in an urban setting that does not have a standalone campus, you know. To your knowledge, did the FBI discuss this issue with you? Did GSA comment on that and raise—did either raise concerns about that? And I guess—so I can get all these out in the short period of time—what changed since fiscal year 2017 that no longer makes the best option to consolidate the FBI in either Maryland or Virginia?

If the FBI decided that this was no longer the best option, what was GSA's role in helping to come to that decision? Does the GSA not have a role in advising other Federal agencies to make the most cost-efficient decision compatible with the agency's mission?

And, finally, can you commit to the committee that the FBI's new plan to consolidate in its current location is more cost-efficient than the earlier plan to exchange FBI Hoover building for a new site in either Virginia or Maryland?

Ms. MURPHY. Sir, I am going to try and answer those questions quickly, because I know that I am running over on time.

Mr. QUIGLEY. I am, too.

Ms. MURPHY. All right. So, on the issue of a main campus, the FBI told GSA that they considered proximity to their parent department, Department of Justice, to be paramount, so that they wanted to make sure that they were close to their parent organization. They also said that, you know, they wanted to be close to transportation, that they had other security requirements.

As to your question as to is it not GSA's job to help them inform their requirements: yes, it is. However, GSA does not have the expertise to substitute its judgment on matters of national security for that of the FBI. What we do have the ability to tell them is here are the most cost-efficient and cost-effective ways to meet those requirements.

When the FBI came and told GSA that they believed that proximity to the Department of Justice was paramount, that changed the calculation. The other item that changed the calculation was that instead of looking for a requirement to accommodate 11,000 employees, they were now looking for an option that would accommodate just over 8,000 employees. That put the site on Pennsylvania Avenue back in play. There would have been no possible way to accommodate 11,000 employees at the current J. Edgar Hoover site. However, there is a way to accommodate those 8,000 employees at that site.

I am trying to think if there were other questions that I missed, and if there are, I would be happy to get back to you on them. Hopefully, that will address your concerns.

Mr. GRAVES. You did well. Mr. Stewart, Ms. Herrera Beutler, and then Mr. Amodei, and that should wrap us up today.

Mr. STEWART. Thank you, Chairman. We appreciate your patience and understanding. Like everyone, we have got multiple hearings and bounce back and forth. Ms. Murphy, thank you for being here. It is always fun to read your people's resumes, and yours is impressive; 11,600 people is an enormous responsibility. I also found it interesting you were one of the leaders in a technology startup company, because my question is going to lend itself in that direction, if we could.

I am curious to hear about GSA's efforts to improve the information technology, especially on the kind of citizen-facing applications. I am older than you; I am older than most people in the room, maybe everyone in the room.

Ms. HERRERA BEUTLER. Not me.

Mr. STEWART. Yes, I am definitely older than Ms. Herrera Beutler, by a lot. You know, people in my age and generation, we generally kind of seek face-to-face interactions with agencies or with businesses; certainly not true of my kids. You know, we text way more than we talk. I would prefer to talk, but, you know, it is just easier, and you end up texting all day, which I enjoy as well. And when a citizen needs interaction with the government, again, we need to consider that.

I saw something interesting, and I think maybe my staff can back me up. It might have been an IRS study. But they said that a personal interaction was about \$54 per interaction versus an electronic one was pennies, like 20 or 30 pennies is all.

Now, last thing, and then I will get to my question. Last year, Congress enacted the Modernizing Government Technology Act, which I am sure you are familiar with. It appropriated certain money—\$100 million—and I want to know what you guys have done with some of that money. What is the status of TMF within GSA? And give us some good news, will you, please?

Ms. MURPHY. Yes, sir. Thank you very much. The appropriations for \$100 million—we are very grateful to this committee that we received those last month. GSA moved quickly. The OMB Director appointed the board; I appointed as GSA's representative a gentleman named Alan Thomas, who is the Commissioner of the Federal Acquisition Service, who has got a lot of expertise actually working for a small business that was trying to do business with the government, which I thought was an important point of context as well as being technologically savvy.

They are in the process right now of reviewing the second round of business cases, and they have established criteria. We have appointed an executive director to help support some of those—in the assessments. We want to make sure that the investments that are made with that \$100 million deliver returns to taxpayers.

Mr. STEWART. I am going to accelerate your answer, if you could.

Ms. MURPHY. Okay.

Mr. STEWART. So, you are in the process of defining and putting a team together to implement, true?

Ms. MURPHY. The team is in place.

Mr. STEWART. So, give us an idea of what your goal is. I mean, what do you envision is going to be different once you have been able to design and implement your plans?

Ms. MURPHY. My understanding is the board's criteria are that they are looking for investments that will see a positive return, so they can repay the fund quickly; that will have technology that they can leverage across agencies, so they will not just be hitting a specific issue; that will be improving the security of the data and the information that is being—and that are going to improve citizen services.

I wanted to comment on your—you were discussing contact centers or how we make it possible. One thing GSA is doing outside of the Technology Modernization Fund is we are in the process of putting in place a new contact center contract for other agencies that works with them, and we have also got a center of excellence trying to further it, to make it easier for individuals to contact the government the way they want to, whether it be trying to make sure first that their websites have the information available easily and readily so that they do not need to call—because if you can avoid a phone call to a government agency, that usually makes most people happy.

But when they do need to contact, can they do it through text message, through phone? What is the way that they want to reach us, and how do we facilitate that happening, so they get the result quickly and that we respect their time? As a small business owner, I think you probably know that time is what kills everyone in dealing with the government. So, trying to be respectful of that.

Mr. STEWART. Yeah. I appreciate that. And so, bottom line, are you optimistic that we are going to have a better experience for U.S. citizens on this?

Ms. MURPHY. Oh, yes, I am. And I will tell you another reason I am optimistic about it. If you look at the President's management agenda, it puts an incredible amount of emphasis on the citizen experience and making sure we always put that first in all the investments or all the initiatives we are trying to pursue.

Mr. STEWART. And this will take how long?

Ms. MURPHY. The Technology Modernization Fund—we are just starting the President's Management Agenda. We have quarterly deliverables that are supposed to be accompanied by successes. However, it is a 10-year plan with quarterly milestones that, each quarter, we come back and we deliver.

Mr. STEWART. I was loving your answer until I hear the 10-year plan part. But—

Ms. MURPHY. I think 10 years is actually—I think you should love 10 years, because if we told you we could do it in a year, it would not be a candid answer. If we told you that we were going to take successes every quarter and build upon those and have it be an iterative process, that is a real answer.

Mr. STEWART. Okay, I can accept that. I appreciate your candor. We have already established I am old. I might not even be alive in 10 years, but do what you can. Chairman?

Mr. GRAVES. Ms. Herrera Beutler, and then Mr. Amodei.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman. I am going to switch over to transportation. The budget proposes to purchase the DOT building headquarters located here in DC. I am pointing, because it is that way. Let's see, where are we? Yes. It is not too far. We walk by it from time to time.

Ms. MURPHY. Yes, down by the ballpark.

Ms. HERRERA BEUTLER. Yes, down by the ballpark.

Ms. MURPHY. It is all back to baseball.

Ms. HERRERA BEUTLER. For \$768 million. GSA is currently renting the building for about \$490 million annually. Two questions: Where does GSA prioritize this lease purchase among the other construction requests in the Federal budget fund? And secondly, are there timing constraints for executing this lease purchase, and what are they?

Ms. MURPHY. If I answer the second question first, and then—

Ms. HERRERA BEUTLER. All right.

Ms. MURPHY. There are, indeed, timing constraints. The building was a build-to-suit for the Department of Transportation. It is a 15-year lease, and we have got a purchase option that we can exercise at a fair market value. We have to notify the vendor—sorry, the lessor—of our intention to exercise that option so that we can achieve the savings.

If not, we can pay them to extend that option, but that again means more cost for taxpayers. So, that is why it is part of this year's budget, and that is part of how we prioritized the requirement.

Obviously, the Department of Transportation needs a headquarters within the District. We have got a site that meets their requirements. Having them move and build a new site is not—is going to cost billions of dollars. This will allow us to have that property and continue to maintain and invest in it for decades to come, so it can be a long-term asset and part of the Federal patrimony in terms of our infrastructure.

Ms. HERRERA BEUTLER. Okay, great. So, in terms of prioritization among other construction requests in the building fund, it is up there?

Ms. MURPHY. It is. One of our top requests for 2018. I think, dare I say, we have got a few other requests in there as well—the land port of entry at Calxico is a priority—and so all of these together we think are an important—they make a comprehensive package request.

Ms. HERRERA BEUTLER. Got it. Thank you. I yield back.

Mr. GRAVES. Thank you, Ms. Herrera Beutler. And for the final question, Mr. Amodei is recognized.

Mr. AMODEI. Thanks, Mr. Chairman. Madam Administrator, if you could just have your staff figure out which assisted living facility Mr. Stewart will be in at that 10-year thing, and if you could get him that information—

Ms. MURPHY. We cannot speak to that.

Mr. AMODEI [continuing]. That would be great. I will go ahead and pay for that out of my campaign account. Just let me know.

Okay, I want to expand our earlier discussion just a little bit. If it could include also, to the extent that your agency knows, its lease portfolio in that neck of the woods, I would like an idea of

that, because that follows on to—I do not know if you are aware or not, but if you are, what other agencies are not going through you to perhaps lease properties in the area? And, obviously, the reason for wanting to know that is what is the Federal footprint in a given area?

I know that your actual ownership footprint is not that extensive, which brings to me to the last one. I would like to have a discussion with your folks on FASTA and the concept of Federal lands bills. And everybody goes, What is he talking about? Well, when you are in the West, you are talking about the fact that the Federal Government, usually through the Department of the Interior—skip the Department of Defense for now—owns a heck of a lot of land.

And there are lands bills that come from time to time, and in my district, there are two that are being prepared for the counties in both urban areas of the state, which is Washoe County, where Reno is, and Clark County, where Las Vegas is.

And so, when we talk about this appropriations process, and it is like, Well, hey, if you want a Federal building or whatever, then that costs money, and you have got to go through the—I get all that, except that in some instances where there may be a Federal estate which can, quite frankly, potentially—GSA can be given a piece of land on the perimeter that somebody else wants to do something else with that can potentially provide some proceeds to do something downtown or wherever else. Now, I am fully cognizant of the phrase earmark, but if it is not for just one district, or if it is—you know, there are ways to do that legitimately without making it that. But I suggest that only as something that maybe ought to be looked at in terms of providing another funding source for the Federal Government consolidating its administrative footprint in areas where it operates.

So, I would like to have that on the table, too, when we talk; the lease picture, as well as—has anybody thought about the potential application of something like that to use the Federal estate to Federal benefit where there is a growth issue?

Ms. MURPHY. Thank you, Congressman, and I would be happy to make sure we give you all the lease information as well. As you know, about half of our square footage at this point in time is leased, and so, to get a full picture of what our portfolio is, you do have to look at the lease space. We are making every effort to move people out of leased space and into Federal buildings. I actually met with the GAO, and we are actually helping them move all of their offices into Federal buildings and consolidate those right now.

Mr. AMODEI. And so, I guess it goes without saying that for those buildings that are yours that you lease, you lease them at a rate where GSA breaks even or makes money. It is not a red-ink proposition for leasing space in a Federal building to a Federal agency. Is that correct?

Ms. MURPHY. When we lease space from the private sector, we pay the negotiated rent that goes through a prospectus process here and is approved by both our authorizing committees and ultimately through the appropriations process.

When we are leasing out space within Federal buildings, we do it at commercial rates so that we do break even, and we can maintain the building. The exception being things like land ports of

entry or where there is really not a commercial equivalent, where they are so specialized, and we do those at a return on investment rate.

Mr. AMODEI. So, potentially expanding your fee hold or interest in Federal space is not a money-losing proposition, because the user pays whatever the costs are for that.

Ms. MURPHY. I want to be careful, because I have not thought about this before, and I want to make sure I give you a full answer on it. But it is something I would love to talk to you about and make sure that we get you the information necessary.

Mr. AMODEI. Fair enough. Thank you. I yield back, Mr. Chairman.

Mr. GRAVES. Thank you very much. Ms. Murphy, thanks for joining us today. It has been a delight to have you, and congratulations on making it through your first Appropriations Subcommittee hearing. You did very, very well, and we appreciate your thoughtful responses to a lot of thoughtful questions by the committee members.

I am looking forward to working with you in the days ahead as we finalize this product and move it through the committee and through the House floor. Thank you very much, and with that, this hearing is adjourned.

GSA FY19 Graves Questions for the Record

GSA has recommended that Congress enact a series of legislative changes that would give GSA the power to select as few as a single e-commerce portal provider for government purchases of commercial off-the-shelf (COTS) items under Section 846 of the National Defense Authorization Act.

- Please provide the committee with your estimated cost for e-commerce portal implementation and compliance, and with your anticipated source of funding for this work by GSA.

Response: The U.S. General Services Administration (GSA) is in Phase II of Section 846 of the 2018 National Defense Authorization Act (NDAA). Phase II requires market and agency research as well as an assessment of the impact on existing programs. This research culminates in a jointly issued report from GSA and the Office of Management and Budget (OMB) that is due in March 2019. Currently, funding for Section 846 implementation will come from the GSA Federal Acquisition Service's (FAS) Acquisition Services Fund (ASF) and GSA will appropriately structure the fees in order to cover the costs of the program. The fees themselves will be determined in close consultation with our agency partners as well as with industry.

It is important to note that both the law and the Administration's initial implementation plan make very clear that competition shall be used to select portal providers and awards shall be made to multiple providers – not to a single provider, as described in the introduction to this QFR. We strongly support this requirement, which was recently reiterated in the Conference Report for the FY 2019 National Defense Authorization Act. We believe this requirement will help to increase contractor access to the federal marketplace and keep costs down, including fees.

- Please provide the committee with your projections of the fee that will be charged by an e-commerce provider, and how you made those calculations.

Response: The costs of the program are currently being evaluated as part of our Phase II market research and in consultation with industry and our agency partners. The fee models vary greatly across the different business models and, through the proof of concept GSA intends to learn more about an appropriate fee model in order to recoup the cost of the program, while not overburdening product prices.

- Please provide your estimate of the amount of government COTS sales that are projected to shift from the federal Schedules program to the e-commerce provider.

Response:

The statute requires GSA to conduct analysis on the impact of using commercial e-commerce platforms would have on existing government programs including the Multiple

Award Schedules program. GSA is conducting that analysis as part of current Phase II and will provide Congress that analysis in the Phase II report due in March 2019. As a preliminary observation, however, we anticipate relatively limited impact to the Schedules. The law limits the online marketplace to purchases of COTS below the simplified acquisition threshold, which is only a small portion of sales conducting through the Schedules. In addition, as explained in the phase I implementation plan, product categories will be screened to determine if it is suitable to purchase them through an online marketplace (e.g., considering factors such as potential risk to the supply chain).

- Does GSA anticipate it will require appropriated funding to implement and operate the Section 846 e-commerce provider system if it migrates to all COTS sales to the government.

Response: No, it is not expected that appropriated funding will be necessary. GSA is planning to use the Acquisition Services Fund (ASF), which recovers its expenses through fees, to cover the costs of the program.

Please provide the language you would recommend in order for GSA to revise Title 48 of the Federal Acquisition Regulations 552.238-74 relating to the IFF.

Response: Clause 552.238-74, Industrial Funding Fee and Sales Reporting, is found in the General Services Administration Acquisition Regulation (GSAR), GSA's supplement to the Federal Acquisition Regulation. This clause only applies to the Federal Supply Schedules, not to other procurement programs including the commercial e-commerce portals. Because GSAR 552.238-74 does not apply to commercial e-commerce portals, GSA does not anticipate revising this regulation.

- Please provide the GSA plan to offset the loss of IFF revenue currently received by GSA to support all Schedules overhead costs.

Response: The impact to the GSA Schedules program will be assessed as part of Phase II: Market Research and Consultation, as well as throughout the implementation of the proof of concept. At this point, it is unclear what the specific impact will be to the IFF. The intent of the commercial e-commerce portal program is to break-even through its fee structure, while also seeking opportunities to shed costs in areas where the vendor will now perform the work (e.g. managing catalogs and product pricing; owning the platform; onboarding suppliers; etc.).

WEDNESDAY, APRIL 18, 2018.

THE JUDICIARY

WITNESSES

HON. JOHN W. LUNGSTRUM, CHAIR, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

HON. JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

OPENING STATEMENT OF CHAIRMAN GRAVES

Mr. GRAVES. Good afternoon. We will call this hearing to order. Today we would like to welcome Judge John Lungstrum. Thanks for joining us today and being a part of this hearing. As the new chair of the Budget Committee for the Judicial Conference, we welcome you to your first hearing.

I have enjoyed our time together, as we have met previously, and I know that you have taken over a role from somebody we had dear affection for and that is Judge Gibbons who was fantastic. We know that you will fill those shoes very well in your tenure as budget chair. Mr. Duff, we welcome you back.

Mr. DUFF. Mr. Chairman.

Mr. GRAVES. You have been a longstanding participant in these hearings and have done a magnificent job, and we appreciate your service. I expect today we will have members coming and going throughout the day. We have a busy schedule for all Members on our 12 subcommittees as we have an accelerated process right now to move the appropriations bills through the subcommittees and full committee.

So, as you see members come and go, we will ask you each questions throughout the afternoon. We certainly look forward to your testimonies and remarks, and if the ranking member has any opening remarks, he will be recognized right now.

OPENING STATEMENT OF RANKING MEMBER QUIGLEY

Mr. QUIGLEY. Thank you, gentlemen. Thank you, Mr. Chairman. I would like to join you in welcoming Director Duff back before the subcommittee, as well as Judge Lungstrum for his first appearance—is that correct?

Judge LUNGSTRUM. Yes, sir, that is correct.

Mr. QUIGLEY. Very good. We will keep our remarks brief in the interest of allowing sufficient time for questions. And as I have said many times, a well-functioning Federal court system is a key pillar to our democracy and is fundamental to ensuring the constitutional rights of all Americans are not infringed.

But it cannot properly function without the support of this committee. It is crucial that we provide these courts with the resources

needed to effectively and efficiently perform their constitutional duties. As a former practicing lawyer, I understood and deeply value the work that you do.

The recently enacted fiscal year 2018 appropriations bill included an increase of \$184 million over the prior year's discretionary appropriations, and your budget request for the fiscal year 2019 continues the work to rebuild and invest in the future of our court system.

In particular, it is my view that the adequate funding of the Federal Defender Services Program must be a priority. I was pleased that Congress was able to provide a 3 percent increase for the program in 2018 and I would like to follow the needs closely to be sure that we stay on top of the resource requirements.

I remain a staunch advocate and defender of the work you do and will do all I can to ensure that robust funding for the judiciary remains a priority. Once again, welcome, and we look forward to your testimony. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley. Judge, you are recognized for any opening comments you may have. We know that you have submitted a written statement for the record and we have all viewed that.

OPENING STATEMENT OF JUDGE LUNGSTRUM

Judge LUNGSTRUM. I will make very brief oral remarks in keeping with the thought to save as much time as we can for questions.

Chairman Graves, Ranking Member Quigley, and other members of the subcommittee as you may come and go, thank you for the opportunity to appear here today with Director Duff to testify on the judiciary's fiscal year 2019 budget request.

In February, I succeeded Judge Gibbons as chair of the Judicial Conference's Budget Committee. Judge Gibbons, of course, appeared before this panel many times. I look forward to working with the subcommittee in my new role.

In the interest of time, I will make very brief opening remarks, highlighting our 2019 funding priorities and our ongoing cost-containment efforts in our space and facilities program.

First, and most importantly, I want to thank the subcommittee for the 2.7 percent increase we received for 2018 and the recently enacted omnibus appropriations bill. We are particularly grateful for the \$10 increase in the daily payment to citizens performing Federal jury service, as well as the \$6 increase to the hourly rate paid to private attorneys serving as court-appointed defense counsel. We greatly appreciate you again making the judiciary a funding priority.

For 2019, we ask for a 3.2 percent overall increase above the 2018 appropriation level that we assumed in building our request. We are recalculating our 2019 appropriations requirements based on the final enacted 2018 funding and will inform the subcommittee of the changes that the recalculation will bring about later this month.

A 2.4 percent increase is necessary to maintain current services. The remainder of the request is for targeted enhancements for courthouse security and infrastructure costs, initiatives in our probation and defender services programs, and other priorities.

We seek funding increases for several security-related items, including \$5.5 million to begin implementation of a multi-year strategy to replace aging building access systems and \$2 million for additional court security officers to improve courthouse security. Our request also includes \$12 million associated with new courthouse construction projects. GSA funds the construction of new courthouses, but certain telecommunications, security, and other infrastructure expenses are the judiciary's responsibility. So, we are requesting funds for those also.

In our probation program, we are requesting \$13 million to replace the case tracking system which our officers use to supervise offenders released from prison and living in the community and defendants on pre-trial release. This enhancement is much needed and will improve officer and public safety.

In our defender services program, we seek an additional \$2 million for an additional \$6 increase to the hourly rate paid to court-appointed private attorneys. The Judicial Conference's goal is to attain the full statutory authorized hourly rate of \$147 and the requested increase would put us within \$1 of that goal.

We also seek \$3 million to support hiring in federal defender offices consistent with recently developed staffing formulas. Other enhancements include four additional magistrate judges to address workload needs in Puerto Rico, Texas, South Dakota, and Georgia, and several other smaller initiatives for cybersecurity and training.

We have a number of cost-containment efforts under way, which include those in our space and facilities program, which are achieving significant savings. Our space reduction efforts, combined with changes to rent pricing policies that were negotiated with the GSA, generate judiciary rent savings of nearly \$80 million annually.

I discuss these savings in greater detail in my written testimony. Thank you again for the opportunity to appear here today, and I reiterate that I look forward to working with the subcommittee.

I ask that you make part of the record my statement and the statements of the other judiciary entities on whose behalf we submit budget requests. That concludes my remarks, and I am happy to respond to any questions.

**STATEMENT OF
HONORABLE JOHN W. LUNGSTRUM, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

April 18, 2018

INTRODUCTION

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, my name is John Lungstrum, and I am Chair of the Judicial Conference Committee on the Budget. I am a senior United States district judge for the District of Kansas and have been on the federal bench since 1991. My chambers are in Kansas City and I served as chief district judge from 2001 to 2008. I have served on the Budget Committee since 2005 and chaired its Economy Subcommittee the last several years. Chief Justice John G. Roberts, Jr. appointed me chair of the Budget Committee effective February 1, 2018. I succeed Judge Julia Gibbons in this role and will endeavor to maintain the excellent relationship she fostered with this Subcommittee.

As the Chair of the Judicial Conference Committee on the Budget, I will testify on the Judiciary's appropriations requirements for fiscal year 2019. Our fiscal year 2019 request of \$7.22 billion in discretionary appropriations achieves our goal of holding down cost growth across the Judiciary where possible while seeking the resources to support the operations of the Judiciary. My testimony also will discuss final fiscal year 2018 funding outcomes; our concerns about the Administration's proposed cuts to non-defense discretionary spending; cybersecurity; and our cost-containment efforts, including a detailed discussion of our success in lowering Judiciary space rental costs. Appearing with me today is James C. Duff, Director of the Administrative Office of the United States Courts.

STATEMENTS FOR THE HEARING RECORD

In addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade be included in the hearing record.

FISCAL YEAR 2018 FUNDING FOR THE JUDICIARY

On behalf of the entire Judiciary, I thank the Subcommittee for the funding levels and provisions included in the recently enacted Consolidated Appropriations Act of 2018. Final funding levels for Judiciary accounts are sufficient for us to fulfill our constitutional mission. We appreciate the \$10 increase, from \$40 to \$50, in the daily payment to citizens performing federal jury service, the first such increase since 1990. We believe the increase will lead to fewer jurors seeking to be excused from jury service and will result in more representative juries. We are also grateful for the \$6 above inflation increase to the hourly rate for court-appointed

private lawyers, known as panel attorneys, for work performed in non-capital cases. Surveys show that it has been getting more difficult to retain qualified and experienced panel attorneys in district courts at the prior rates. The short-term extensions for 10 temporary district judgeships will ensure that the authorizations of these critical judicial resources, in some of the busiest district courts in the country, do not lapse. Lastly, we thank the subcommittee for the funding included under the General Services Administration for the construction of the Judiciary's top three courthouse priorities: Harrisburg, Pennsylvania; Huntsville, Alabama; and Fort Lauderdale, Florida.

In the absence of fiscal year 2018 full year appropriations at the time our fiscal year 2019 budget request was constructed, we made certain assumptions on fiscal year 2018 funding levels for each Judiciary account. These assumptions were based on the fiscal year 2018 House and Senate FSGG Appropriations Subcommittee marks, as well as our updated requirements. With fiscal year 2018 full year appropriations enacted, we will re-estimate our fiscal year 2019 budget request later this spring and advise the Subcommittee of any changes from the fiscal year 2019 request level.

PROPOSED CUTS AND LAW ENFORCEMENT PRIORITIES IN THE ADMINISTRATION'S FISCAL YEAR 2019 BUDGET REQUEST

Each year in her appearance before this Subcommittee, Judge Gibbons would ask that, as you consider funding levels for the upcoming fiscal year, you take into account the nature and importance of the work of the federal courts, and I carry that message again this year. The President's 2019 Budget is particularly concerning, because it includes a proposed \$65 billion cut to non-defense discretionary spending to fund an identical increase in defense spending. As part of the reductions, we understand from the Office of Management and Budget (OMB) that the President's Budget includes a \$300 million "negative allowance" to the Judiciary's 2019 budget request. (Last year in the President's 2018 Budget, the Administration proposed a \$460 million negative allowance for the Judiciary.) OMB is required by statute to transmit the Judiciary's budget request to Congress without change. As an independent and co-equal branch of government we strongly object to the Administration's attempts to cut our request in this manner. We have communicated this objection previously to OMB and will do so again this year.

A \$300 million cut to our fiscal year 2019 request would come at a time in which the Administration intends to increase border security and law enforcement activities, which will increase our workload. Enacted fiscal year 2018 funding and the Administration's fiscal year 2019 budget request provide additional resources for Department of Justice (DOJ) law enforcement components to increase prosecutions for violent crimes, drugs, and immigration offenses. This includes additional prosecutors for enhanced border enforcement initiatives and additional immigration judges. The Department of Homeland Security would also receive funding for new border patrol agents and new Immigration and Customs Enforcement personnel. Absent additional information regarding the timing and implementation for these initiatives, we are unable at this time to ascertain the specific impact these proposals will have on our resource needs. We do know that increased criminal prosecutions always increase the workload of the district courts and impact Judiciary resource needs in many ways (e.g., additional judgeships, additional clerks of court staff and probation and pretrial services officers, increased need for

court-appointed counsel). DOJ's plans to clear the backlog of cases pending in its immigration courts will also impact our workload since appeals from DOJ's Board of Immigration Appeals go to the various courts of appeal.

We are hopeful that enactment of the Bipartisan Budget Act of 2018, which increases the statutory spending caps for fiscal years 2018 and 2019, will provide for a more favorable appropriations environment for Congress in preparing fiscal year 2019 appropriations bills.

STRENGTHENING THE JUDICIARY'S CYBERSECURITY PROGRAM

Cybersecurity continues to be a top priority and the Judiciary's fiscal year 2019 budget request includes a total of \$95 million for cybersecurity activities in our largest accounts.

Following the 2015 cyberattacks on the Office of Personnel Management in which the personal data and background investigation records for millions of current and former federal workers, contractors, and their families were compromised, the Judiciary took immediate steps to reassess its own cybersecurity countermeasures and identified several areas requiring attention. Our information technology (IT) personnel routinely counter a wide range of threats posed by hackers, computer viruses, and other malicious acts. Inevitably, Judiciary systems have and will continue to be targeted, like numerous government and commercial entities worldwide.

The Judiciary's cybersecurity program incorporates multiple layers of security defenses placed throughout its IT networks. The Judiciary employs perimeter defenses, such as firewalls, host and network-based intrusion detection and prevention systems, internet proxies for web-based threat protection, and a Judiciary Automated Systems Incident Response Capability managed at the national level. Security devices are monitored 24 hours a day, seven days a week, with event logs aggregated and reviewed for evidence of malicious activity. A weekly security newsletter is distributed Judiciary-wide to promote cybersecurity best practices, such as awareness of newly available patches and emerging threats. In addition, independent third parties perform periodic vulnerability assessments of Judiciary networks and all new public-facing IT assets prior to deployment. We continually evaluate our cybersecurity capabilities and look for new and innovative technologies to improve our cybersecurity posture.

Since 2016, the Judiciary has initiated significant upgrades and expansions to its cybersecurity operations, including outfitting court units and federal defender organizations with state-of-the-art firewalls, implementing log management to track and analyze network traffic and remediate threats, and creating a national directory to ensure uniformity in user credentials and streamline user authentication.

I assure the Subcommittee that the Judiciary is pursuing an aggressive cybersecurity program to safeguard sensitive case-related information, as well as the personal information of Judiciary personnel and their families.

COST CONTAINMENT

The Judiciary is fully committed to good stewardship. Since 2005, we have been focused on containing costs in the Judiciary and we are justifiably proud of our success. Since the

beginning of our formal cost containment program, we have reduced current and future costs for: rent, information technology, magistrate judges, compensation of court staff and law clerks, law books, probation and pretrial services supervision work, and other areas.

We continue to expand the use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, probation and pretrial services offices, and federal defender organizations to reduce duplicative human resources, procurement, financial management, and information technology activities. Over 90 percent of all courts report having formal or informal/temporary sharing arrangements of some kind. The decision to implement a shared administrative services model is up to each circuit or district, and we are exploring ways to increase shared administrative services, including encouraging voluntary consolidation of offices and other longer-term changes that would further reduce growth in personnel and operational costs.

As we continue our efforts to reduce cost growth in the Judiciary's budget, I emphasize that no amount of cost containment will offset budget cuts or even flat funding in fiscal year 2019. Our budget request is reflective of the cost-containment policies we have put in place and is the amount we require to fulfill our mission.

ACHIEVING RENT SAVINGS THROUGH SPACE REDUCTION AND CHANGES IN GSA PRICING POLICIES

One of the highlights of our cost containment efforts is the significant savings we have achieved in our space rental costs through space reduction efforts and by working with the General Services Administration (GSA) to validate and revise, when warranted, its space pricing policies.

Space Reduction

With strong controls in place to limit the growth in our space rental costs, including revamping our courthouse planning process and instituting new procedures to identify billing errors, our focus in recent years has been reducing the Judiciary's space footprint. In September 2013, the Judicial Conference approved several new policies to facilitate space reduction, one of which established a national 3 percent space reduction goal by the end of fiscal year 2018, subject to certain exclusions, such as new courthouse construction, renovation, or alterations projects approved by Congress. A 3 percent reduction equates to a total of 870,305 square feet of the fiscal year 2013 baseline level of 29 million square feet.

I am pleased to report to the Subcommittee significant progress – and savings – associated with our space reduction efforts. The Judiciary has recently surpassed its national space reduction goal set in 2013. As of October 2017, approximately 803,758 square feet of space has been removed from the Judiciary's space footprint as a result of the space reduction efforts. This reduction equates to a net annual rent savings of nearly \$25 million, which is reflected in our fiscal year 2019 budget request. In addition, 76,600 square feet that was originally calculated in the national space reduction baseline was released back to GSA through the Service Validation Initiative and recently applied to the space reduction goal. Considering these reductions together, the Judiciary has reduced approximately 880,000 square feet and we achieved our national space reduction goal ahead of the deadline. Of course, these rent savings

will grow as we exceed our 3 percent goal even further.

Service Validation Initiative

We also have achieved significant rent savings through a joint initiative with GSA called the Service Validation Initiative, or SVI. SVI is a collaborative effort between the Administrative Office, the courts, and GSA that focuses on evaluating and achieving improvements in the services the Judiciary receives from GSA. Significant progress has been made in the five topical areas of concern to the Judiciary: (1) appraisal methodology/return on investment pricing validation; (2) overtime utility estimating and energy savings policy; (3) space assignment, classification, and rent validation; (4) project management, scope of work development, cost estimating, and Reimbursable Work Authorization processing; and (5) broad-based building management concerns.

The most significant SVI cost impact to date is associated with a new memorandum of agreement (MOU) between the Judiciary and GSA that changed the rent pricing policies for 52 court facilities from a “return on investment” (ROI) methodology, to the more typical market-based appraisal methodology. The projected rent savings from this change in fiscal year 2019 are approximately \$33 million. In addition, under ROI pricing, vacant space in court facilities was not released from the Judiciary’s rent bill until GSA was able to find a suitable backfill tenant. This arrangement resulted in substantial rent payments for space that the courts did not need or use. The same MOU eliminated the requirement for the Judiciary to pay rent on vacant space. As a result, the Judiciary transferred approximately 90,000 square feet of vacant space in ROI-priced buildings back to GSA (76,600 square feet which counted toward our space reduction goal) for further savings of \$3.8 million annually.

Through SVI, significant rent savings also have been achieved through GSA’s revised pricing policy on “tenant floor cuts.” When a single space cuts through multiple floors of a building, GSA assigns tenant floor cut pricing. This space is commonly found in courtrooms, auditoriums, stairwells, and elevators. Through SVI, GSA and the Judiciary agreed to a new policy in which the second story of a courtroom (or similar tenant floor cut space) is now billed at 50 percent of the standard rental rate instead of 100 percent. A reduction of approximately \$18 million associated with the new pricing policy took effect in fiscal year 2017. I emphasize that although these changes were negotiated by the Judiciary through the SVI partnership with GSA, the new pricing policy on tenant floor cuts applies to GSA’s portfolio government-wide, thus generating savings for other federal agencies.

In summary, space reduction and revised GSA rent-charging policies on tenant floor cuts and building appraisals generate total Judiciary rent savings of nearly \$80 million annually.

JUDICIARY’S FISCAL YEAR 2019 BUDGET REQUEST

The Judiciary’s fiscal year 2019 budget request of \$7.22 billion in discretionary appropriations reflects an overall 3.2 percent increase above the fiscal year 2018 assumed level to support the constitutional and statutory mission of the Judiciary. As I discussed at the outset of my testimony, we will re-estimate our fiscal year 2019 budget request based on final enacted fiscal year 2018 appropriations and will advise the Subcommittee of any changes from the

current request level. Although this re-estimate may result in revised dollar amounts for portions of our request, the general priorities and areas of focus detailed below will not change.

The Judiciary's requested increase of \$223 million includes: (1) \$168 million for adjustments to base for standard pay and non-pay changes to maintain current services, and (2) \$55 million for program enhancements. I will first summarize the fiscal year 2019 requests for our four major accounts and discuss base adjustments needed to maintain current services, followed by a detailed discussion of our program enhancements. I note that, consistent with the President's 2019 budget proposal for executive branch employees, the Judiciary's budget request does not include a January 2019 Employment Cost Index (ECI) or locality pay adjustment for Judiciary personnel. A summary table of our fiscal year 2019 request is provided in Appendix A.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations nationwide, including 28,000 Judiciary personnel in the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. For this account, we are requesting a 2.2 percent increase in fiscal year 2019 to \$5.14 billion in discretionary appropriations. The request includes a \$90 million net increase for adjustments to base, of which \$79 million is for pay and benefits adjustments (no 2019 ECI/locality adjustment) and adjustments for goods, services, and contracts; \$50 million is to request appropriated funds to replace the projected decline in fees and carryforward balances available to finance fiscal year 2019 requirements; \$8 million is for 54 additional chambers staff associated with projected increases in filled Article III judgeships and judges taking senior status; a \$37 million base reduction is to better align court allotments with actual spending; a reduction of \$5 million is associated with savings and non-recurring costs in our IT program; and a \$5 million reduction is for non-recurring costs in our probation program associated with implementation of evidence-based practices programs.

The Defender Services program, which provides constitutionally guaranteed court-appointed criminal defense representation under the Criminal Justice Act to financially eligible defendants, requires a 5.9 percent increase to \$1.14 billion in fiscal year 2019 to handle an estimated 193,500 representations. The request includes \$59 million in adjustments to base, of which \$14 million is for standard pay and benefits adjustments (no 2019 ECI/locality adjustment); \$8 million is for an estimated 2,500 additional projected Criminal Justice Act panel attorney representations; \$4 million is for adjustments for goods, services, contracts, and space adjustments; and \$33 million is to replace the non-recurring carryforward balance with appropriated funds.

The Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 5.7 percent increase to \$602 million for fiscal year 2019. Adjustments to base total \$18 million, including a \$2 million net increase for standard pay and benefits adjustments (no 2019 ECI/locality adjustment) and adjustments for goods, services, and contracts; \$7 million for a required wage rate increase for contract court security officers, estimated at 3 percent; \$2 million for increased Federal Protective Service charges; and \$8 million for security systems and equipment adjustments.

The Fees of Jurors and Commissioners account funds statutory fees and allowances for grand and petit jurors, as well as land commissioners, who are appointed by a court to determine just compensation in federal eminent domain cases. This includes the daily compensation paid to jurors as well as related costs for meals and incidental expenses. This request totals \$51 million in fiscal year 2019, an 11.8 percent increase above the fiscal year 2018 assumed level. The requested increase includes \$0.3 million in adjustments to base for inflationary adjustments and projected changes in grand and petit jurors requirements.

PROGRAM ENHANCEMENTS TO IMPROVE JUDICIARY OPERATIONS

Ensuring Sufficient Security at Federal Courthouses

We request \$7.5 million for two security-related enhancements in our Court Security account. First, the Judiciary requests an increase of \$5.5 million as the first installment of a new funding strategy for the physical access control systems (PACS) program. PACS control building access and are designed to ensure that unauthorized or dangerous people do not gain entry to court facilities, and only judges, authorized federal employees, and contractors can access secure interior court space. Many of the PACS systems nationwide are fragile and failing, or are in danger of failing, due to aging equipment and outdated software no longer supported by the vendor.

Current spending on PACS systems – \$22 million is planned for fiscal year 2018 – is insufficient to keep pace with failure rates. The Judiciary worked with the U.S. Marshals Service (USMS) to develop a comprehensive, multi-year, budget strategy that prioritizes facilities based on risk of a PACS systems failure. Specifically, Judiciary budget requests will seek approximately \$5 million annual increases in fiscal years 2019 through fiscal year 2022, to increase PACS funding from \$22 million in fiscal year 2018 to \$42 million in fiscal year 2022. PACS funding would then be maintained at the \$42 million level to fund PACS upgrades and begin to refresh PACS on a 10-year cycle, starting in fiscal year 2024.

Second, the Judiciary requests \$2 million for continued phased implementation of revised USMS staffing standards for court security officers (CSOs) at federal court facilities. The updated standards, adopted in 2015, strengthen security at court facilities by adding CSOs in security control rooms and at garage/loading docks at large court facilities and include a crucial exterior “forward watch” position outside courthouse entrances to identify and address threats before they gain entry to the courthouse. The revised standards call for an additional 346 CSOs. Thus far, 138 new positions have been added in fiscal years 2016 and 2017, and the Judiciary’s fiscal year 2019 request seeks funding for 35 additional CSO positions. With this request, the phased implementation of the new staffing standards will be 50 percent complete (173 CSOs would be added of the 346 additional CSOs required).

Critically Needed IT Improvements in the Probation and Pretrial Services Program

In recent years, the information technology applications maintained by the Administrative Office in support of the probation and pretrial services program have had significant problems with reliability and performance. There are more than 30 applications that work together with the Probation and Pretrial Services Automated Case Tracking System

(PACTS) to enable probation and pretrial services officers to maintain key information on offenders released from prison and under supervision and defendants on pretrial release. These applications, along with PACTS, have experienced recurring outages and slowdowns, which impede the ability of officers and staff to access crucial case file information. The lack of immediate access to data on offenders and defendants jeopardizes officer safety, increases risk to public safety, causes delays in providing services to courts and other agencies, and interferes with measuring outcomes and monitoring information required to assess budget and staffing needs.

The Administrative Office has developed a two-step plan to ensure the reliability and performance of PACTS and related applications. The first step is to stabilize PACTS while a replacement system is developed and deployed. The stabilization phase, which began in 2017, has yielded positive results by reducing the number of outages and the system recovery time when outages occur. The second step is to develop a replacement system for PACTS with commercial off-the-shelf products. Completion of the replacement is expected to be a multi-year project with an estimated cost of \$24.5 million, \$11.1 million of which was funded in the fiscal year 2017 financial plan, and the remaining \$13.4 million is included in the fiscal year 2019 request.

Additional Positions in the Defender Services Program

For several decades, the Judiciary has employed a work measurement process to develop statistically sound staffing formulas to estimate the number of employees required to accomplish the program mission. In September 2015, the Judicial Conference approved the first formulas for calculating staffing requirements in federal defender organizations (FDOs) beginning in fiscal year 2016. The approved staffing formulas indicated that some FDOs are significantly understaffed relative to the workload they are required to address. To mitigate this situation, and recognizing that the new positions could not be filled in a single year, the Judiciary is executing a multi-year hiring strategy, started in 2016, to incrementally increase staffing levels to reach full formula requirements. Funding was requested in fiscal years 2016 and 2017 to begin increasing FDO staffing. The fiscal year 2019 request includes a program increase of \$6.8 million (56 positions in federal public defender offices and 14 positions in grant-funded community defender organizations) to implement the FDO staffing formulas at 98 percent of formula requirements. This program increase is partially offset by a \$3.5 million downward adjustment to Criminal Justice Act panel attorney requirements to reflect capital workload that is expected to shift from panel attorneys to FDOs.

The request also includes \$186,000 for three additional positions at the Administrative Office funded by the Defender Services appropriation to support training programs for federal defender staff and panel attorneys to improve client representation.

Providing Adequate Compensation to Court-Appointed Counsel

We request the Subcommittee's continued support for a program enhancement that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. Our fiscal year 2019 congressional budget request includes \$1.9 million for a \$6 increase to the non-capital panel attorney rate (i.e. non-death penalty), which, based on our fiscal

year 2018 appropriations assumptions, we estimated would increase the rate from \$134 to \$140. Because the fiscal year 2018 omnibus appropriations bill provided a \$6 above inflation increase, the \$6 increase requested in fiscal year 2019 will instead raise the rate from \$140 to \$146. When we re-estimate our fiscal year 2019 funding request later this spring to reflect actual fiscal year 2018 outcomes, we will make the necessary adjustment to the panel attorney non-capital rate.

The Criminal Justice Act (CJA) authorized the Judicial Conference to implement annual inflationary adjustments to panel attorney rates, subject to congressional funding. If the statutory pay adjustments provided to federal employees (Employment Cost Index component only) had been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2019 would be \$147, \$7 above the \$140 rate provided in the fiscal year 2018 omnibus appropriations bill.

The hourly rate is intended to cover both overhead and a fair hourly fee. There are more than 10,000 private panel attorneys accepting CJA appointments in federal court and most are small business owners working solo or in small law firms. According to a 2015 nationwide survey conducted by the Judiciary, panel attorneys billed, on average, \$281 per hour for privately retained criminal cases and incurred overhead costs of \$85 per hour. With a current hourly rate of \$140, after reducing the hourly rate for the costs of overhead expenses, highly-qualified and dedicated CJA counsel net only \$55 of compensation per hour before taxes. By comparison, the Department of Justice pays \$300 per hour to retain private counsel to represent current or former federal employees in civil, congressional, or criminal proceedings.

The Judiciary's goal is to attain the full non-capital rate authorized by statute – \$147 for fiscal year 2019 – and a \$6 per hour increase in fiscal year 2019 would put us within \$1 of that goal. Ensuring the Sixth Amendment right to effective counsel depends on the quality and competence of these CJA panel attorneys, and a fair hourly rate is essential to meeting this constitutional mandate.

Infrastructure Costs for New Courthouse Construction Projects

In fiscal year 2016, Congress provided GSA with an unprecedented \$948 million for the construction of eight new courthouses (and partial funding for a ninth), as well as \$53 million for federal buildings that jointly house U.S. courthouses and other federal agencies in Greenville, Mississippi (new construction), and Rutland, Vermont (acquisition from U.S. Postal Service).

In a new courthouse project, GSA is responsible for shell buildout, and the Judiciary is responsible for certain infrastructure costs, such as furniture, information technology cabling/wiring, security, and other space-related infrastructure. These infrastructure costs must be funded in accordance with project construction schedules or the courthouses will not be fully operational by their expected occupancy dates. In addition to infrastructure costs, the Judiciary must pay for office moves and swing space costs.

Current estimates for Judiciary infrastructure and related costs for the new courthouse projects total between \$90 million and \$100 million through fiscal year 2024. The Judiciary's fiscal year 2019 request includes \$5.6 million in the courts' Salaries and Expenses account for telecommunications costs and swing space for the new courthouse projects in Des Moines, Iowa;

Anniston, Alabama; San Antonio, Texas; Toledo, Ohio; Charlotte, North Carolina; and Savannah, Georgia; and \$6.9 million in the Court Security account for new security systems and screening equipment for courthouse projects in Toledo, Ohio; Anniston, Alabama; San Antonio, Texas; and Greenville, Mississippi.

New Magistrate Judges to Meet Workload Demands

Our request also includes a program increase of \$4 million in the courts' Salaries and Expenses account for four full-time magistrate judges: three new full-time magistrate judges (and associated staff and operating costs) to address workload needs in San Juan, Puerto Rico; McAllen, Texas; and Atlanta, Georgia; and the conversion from part-time to full-time of a magistrate judge in Rapid City, South Dakota.

Daily Pay for Federal Jury Service

The Judiciary's fiscal year 2019 budget request includes a \$10 increase to \$50 per day for juror compensation based on the assumption that the \$40 rate would remain in effect for fiscal year 2018. As I mentioned at the outset of my testimony, we were very pleased and grateful to find that the fiscal year 2018 omnibus appropriations bill included the funding and legislative language necessary to increase the daily juror payment to \$50 per day, effective May 7, 2018. When we re-estimate our fiscal year 2019 request later this spring, we will make the necessary adjustments to reflect the fact that this increase has already been funded.

CONCLUSION

Chairman Graves and Ranking Member Quigley, thank you for the opportunity to appear before you today and I look forward to working closely with the Subcommittee in my new role as Budget Committee chair. I hope that my testimony provides you with some insight into the fiscal year 2019 funding priorities of the federal courts. As you make decisions on fiscal year 2019 funding for the agencies under the Subcommittee's jurisdiction, we ask that you consider the Judiciary's unique constitutional role in our system of government. In return, we commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Subcommittee may have.

**Judiciary Appropriations
(\$000)**

Discretionary Appropriations Account	FY 2018 Assumed Appropriation	FY 2019 Request	\$ Change FY 2019 vs. FY 2018 Assumed	% Change FY 2019 vs. FY 2018 Assumed
U.S. Supreme Court				
Salaries & Expenses	\$80,669	\$84,359	\$3,690	4.6%
Care of Building and Grounds	\$15,328	\$15,999	\$671	4.4%
Total	\$95,997	\$100,358	\$4,361	4.5%
U.S. Court of Appeals for the Federal Circuit	\$30,350	\$31,274	\$924	3.0%
U.S. Court of International Trade	\$18,509	\$19,070	\$561	3.0%
Courts of Appeals, District Courts, and Other Judicial Services				
Salaries & Expenses - Direct	\$5,019,749	\$5,132,543	\$112,794	
Vaccine Injury Trust Fund	\$8,221	\$8,475	\$254	
Total	\$5,027,970	\$5,141,018	\$113,048	2.2%
Defender Services	\$1,077,511	\$1,141,489	\$63,978	5.9%
Fees of Jurors & Commissioners	\$45,829	\$51,233	\$5,404	11.8%
Court Security	\$569,990	\$602,309	\$32,319	5.7%
Subtotal	\$6,721,300	\$6,936,049	\$214,749	3.2%
Administrative Office of the U.S. Courts	\$87,920	\$89,867	\$1,947	2.2%
Federal Judicial Center	\$28,522	\$29,064	\$542	1.9%
U.S. Sentencing Commission	\$18,219	\$18,548	\$329	1.8%
Direct	\$6,992,596	\$7,215,755	\$223,159	
Vaccine Injury Trust Fund	\$8,221	\$8,475	\$254	
Total Discretionary Appropriations	\$7,000,817	\$7,224,230	\$223,413	3.2%

Mandatory Appropriations:

Salaries of Judges ¹	\$421,613	\$427,049	\$5,436	
Judicial Retirement Funds	\$195,000	\$211,700	\$16,700	
Total Mandatory Appropriations	\$616,613	\$638,749	\$22,136	3.6%

Total Judiciary Appropriations	\$7,617,430	\$7,862,979	\$245,549	3.2%
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1. Mandatory salaries include the salaries of justices of the Supreme Court, judges of the Court of Appeals for the Federal Circuit and Court of International Trade, and Article III and bankruptcy judges funded in the Courts' Salaries and Expenses account. (Magistrate judges and Court of Federal Claims judges are funded by discretionary appropriations.)

**STATEMENT OF SHARON PROST
CHIEF JUDGE, UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND
GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

April 18, 2018

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, thank you for affording me the opportunity to submit this statement in support of the United States Court of Appeals for the Federal Circuit's fiscal year 2019 budget request. I am Sharon Prost, and my tenure as Chief Judge began on May 31, 2014. This is my third budget statement to you on behalf of our Court.

As you know, the United States Court of Appeals for the Federal Circuit is located in Washington, D.C., and the Court has exclusive nationwide jurisdiction over a large and diverse subject area. The Federal Circuit's jurisdiction includes appeals in all patent cases nationwide, all government contract cases, all international trade cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Act, and appeals of cases involving veterans' claims.

Our workload is growing at an unprecedented rate. Three years ago I noted that passage of the Leahy-Smith America Invents Act, Pub. L. No. 112-29 (the AIA), enacted on September 16, 2011, appeared to be driving a substantial increase in the number of patent case appeals being filed at our Court. Specifically, I reported that in 2014 "the Court experienced its highest caseload in five years." Between 2014 through 2017, our caseload has increased by an average of almost nine-percent each year. This past year, we again experienced our highest two-year caseload in over two decades, and our three-year average caseload is the highest in the history

of our Court. A significant majority of that increase is attributable to litigation arising within the Court's intellectual property jurisdiction, a practice area recognized to be "unusually complex and technical . . . [and] extraordinarily time consuming." S. Rep. No. 97-275, at 7 (1981), reprinted in 1982 U.S.C.C.A.N. 11, 17.

Passage of the AIA markedly increased our workload. One of the intended benefits of the AIA was the thought that parties faced with the prospect of costly and protracted litigation in federal court would instead elect to pursue a remedy from the Patent Trial and Appeal Board (PTAB), a newly created adjudicative dispute resolution forum administered by the United States Patent and Trademark Office and implemented by 260 judges who preside over PTAB proceedings. The hope was that an anticipated growth in appeals from the newly created PTAB would be offset by a comparable reduction in the number of appeals arising from litigation in the federal district courts. However, it is still premature to conclude this shift is happening. In FY 2016, we reported a significant and continued increase in appeals from both PTAB and federal district courts since the implementation of the AIA in FY 2013. This past year, though, we saw a drop off in filings from both PTAB and the federal district courts. At this point, we are unable to conclude whether this past year's filing numbers reflect a stabilization of our case filings, whether we are beginning to see a shift in federal district court cases from the AIA, or whether some other factor contributed to the decrease in these cases.

Three other areas of our caseload are noteworthy this year. While our patent cases continue to fluctuate, we saw a significant increase of almost 28 percent in our veteran benefits cases from the United States Court of Appeals for Veterans Claims. We anticipate veteran benefits appeals will continue to grow based on the current number of, and increase in, pending cases before the Court of Appeals for Veterans Claims. Appeals from the United States Court of Federal Claims have increased steadily over the past five fiscal years, with an average annual increase of 4.2 percent. Finally, we believe appeals from the United States Merit Systems Protection Board are atypically low, due in part to the Board currently lacking a quorum and being therefore unable to issue final decisions. We expect a spike in these appeals once the Board is able to resume issuing decisions.

Appeals to the Federal Circuit come from all of the 94 United States District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The Court also hears appeals from certain administrative agency decisions, including the United States Merit Systems Protection Board, the Board of Contract Appeals, the United States Patent and Trademark Office's Patent Trial and Appeal Board, and the Trademark Trial and Appeal Board. In addition, the Court reviews decisions of the United States International Trade Commission, the Office of Compliance, and the Government Accountability Office Personnel Appeals Board.

As is the case with all courts, the overwhelming majority of the Court's budget funds expenses that, although not "mandatory," as that term is defined (reserved for judges' salaries), are nevertheless "practical must pays" necessary to support essential ongoing operations of the Court. These costs include, but are not limited to, salaries, benefits, within-grade increases and promotions, library services and computer-assisted legal research, rent, physical security, and standardized inflationary adjustments applicable across multiple expense categories.

For fiscal year 2019, I ask Congress to provide the funds I have identified as necessary for the Court to sustain current services and to continue to operate in an efficient and effective manner. With these goals in mind, the Federal Circuit's 2019 budget request totals \$34,292,000, which includes \$3,018,000 for mandatory expenses and \$31,274,000 for discretionary expenses.

I wish to thank the Subcommittee for the funding level we received in the recently enacted FY 2018 appropriation. The Court will be updating its FY 2019 Budget Request in the judiciary's upcoming budget re-estimate. I also wish to highlight that with the funds the Subcommittee appropriated for FY 2018, the Federal Circuit will be able to hire a new Information Security Officer. In addition, the Court will be able to fund our investment in cybersecurity improvements, including purchasing necessary safeguards (hardware and software) to meet continuing requirements to improve our cybersecurity posture.

I also wish to express my sincere appreciation to the Subcommittee for recognizing the Federal Circuit's ongoing needs in all the previously enacted appropriations for our Court. In prior years, the Court has been able to fulfill its mission to adjudicate cases in a timely fashion because the

funds Congress appropriated allowed us to maintain the optimal level of court operations and services. I, my fellow judges, and our entire staff understand full well the importance of making the best possible use of every taxpayer dollar entrusted to our stewardship. We have worked hard to contain costs despite a workload that—notwithstanding a slight decrease in case filings this past year—remains 9.6 percent above our five-year caseload average.

The AIA is intended to incentivize innovation by making it easier for American entrepreneurs and businesses to quickly bring their inventions to the market. The success or failure of the AIA in bringing about that result depends in no small part on the maintenance of a system that minimizes costly delays and unnecessary litigation. Our Court is working hard to ensure we manage the processes supporting the timely and appropriate resolution of litigation arising in this practice area and across our jurisdictional portfolio as effectively and efficiently as possible. We do so by recognizing that challenges also present opportunities.

Over the past year, our Clerk's Office has been reviewing and updating our internal case management processes with a focus on decreasing processing time, expanding internal quality control review of case filings, and simplifying processes to accommodate our historically above-average case numbers. At the same time, we have expanded our efforts at public outreach to provide better assistance to litigants and members of the bar conducting business in our Court. Specifically, we have created new public service lines to provide direct and immediate support from Clerk's Office staff to litigants and members of the bar. We also have expanded available resources on our website and communications to the public on operational changes. These changes were most recently seen as part of our Court's implementation of the federal judiciary's next generation of the electronic Case Management and Electronic Case Filing (CM/ECF) system in March 2018, and these initiatives already have received favorable feedback from practitioners.

However, in addition to our need to continue to improve the security of our cyber assets, we still face two of the potential challenges I reported in my fiscal year 2018 statement, perhaps more acutely now than then. Although we are not seeking funding at this time to address these challenges, our future budget requests may.

First, we now have five judges eligible to elect senior status at any time. When a judge elects senior status, this Court must provide staff positions for a law clerk and a judicial assistant to support the judge's continuing work. Because our staffing numbers remain relatively fixed, if one or more judges elect senior status, we likely will be faced with the prospect of having to request additional funding to pay for personnel, or reduce our fully employed support staff by two positions to staff a new senior judge's chambers. Given the workload, added funding for chambers staff would obviously be our first preference. I will continue to monitor this situation closely

Second, we continue to pursue actionable alternatives to reduce, reallocate and reconfigure existing space that will support a reduction in facilities costs. Although we achieved the judiciary's three percent space reduction goal, we have identified no cost-saving alternatives to renewing the lease at our off-site location for senior judges. As previously noted, the lease for that space was coordinated with the Administrative Office of the United States Courts (AOUSC), negotiated by GSA, and supported by Congress. Investments were made to configure the space to support the mission performed by the judges and chambers staff who work out of that facility, and the facility's proximity to our main courthouse enables us to move the copious quantities of documents associated with appellate litigation back and forth with organic manpower and at no additional cost to the government. That lease is due to expire in early 2021. The Court has initiated action with the AOUSC to ask GSA to renew that lease in order to forgo the excessive cost and operational disruption of letting it expire, which would include a requirement to find new and likely more expensive space for the Court's senior judges.

Chairman Graves and Ranking Member Quigley, I would be pleased to provide any additional information that the Subcommittee may require or to meet with Committee members or staff to discuss our budget request in further detail. Thank you for this opportunity to present my views.

STATEMENT OF TIMOTHY C. STANCEU
CHIEF JUDGE
UNITED STATES COURT OF INTERNATIONAL TRADE
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

April 18, 2018

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee,

Thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions arising out of the customs and international trade laws of the United States.

The Court's Fiscal Year 2019 budget request is \$21,157,000, which is comprised of \$2,087,000 for mandatory appropriations and \$19,070,000 for discretionary appropriations. The discretionary portion of the request represents an increase of \$561,000, or 3 percent, from the Fiscal Year 2018 assumed discretionary appropriations of \$18,509,000. The Court appreciates that final enacted Fiscal Year 2018 appropriations of \$18,889,000 fully funded the Court's request. The Court will update its Fiscal Year 2019 request to account for final Fiscal Year 2018 appropriations and transmit revised Fiscal Year 2019 appropriations requirements to the Subcommittee.

Requested Fiscal Year 2019 increases reflect the necessary adjustments to the base in order to maintain current services, fund essential on-going operations and initiatives, and provide for adjustments in pay and benefits. It also accounts for other inflationary factors applied to the base, including an increase in pro-rata costs paid to the Federal Protective Service (FPS) for the critical and necessary security of the Federal Complex (including the Court) in lower Manhattan. Further, it reflects adjustments for security costs paid to the U.S. Marshals Service for the Court's internal security officers.

The Court remains committed to the efficient and conservative management of its resources through sound fiscal practices. The Court continues to utilize cost containment strategies in keeping with the overall administrative policies and practices

of the Judicial Conference, particularly regarding security costs, equipment costs, technology, contractual obligations, and personnel. This is consistent with the Court's long-standing policy of requesting only funds that are absolutely needed for fulfilling the Court's judicial responsibilities, such as increases for pay, benefits, and other inflationary factors, and for essential on-going operations and initiatives of the Court.

As part of our cost containment efforts, in Fiscal Year 2017 the Court released 6,000 square feet of space back to the General Services Administration (GSA) for future utilization by the U.S. Marshals Service. This results in approximately \$132,000 in savings each year while simultaneously improving our security.

In Fiscal Year 2017, the Court entered into an agreement with GSA to fund a facilities security project to bring the building's blast protection to Level IV performance criteria in accordance with Interagency Security Committee (ISC) Standards promulgated by the U.S. Department of Homeland Security. The total cost of the project is \$5.7 million, of which \$800,000 was funded in Fiscal Year 2017 from chambers staff vacancies associated with judicial vacancies. The remaining \$4.9 million is being amortized through an addition to our GSA rent bill of \$979,000 per year through 2022. This project, combined with savings for released space and GSA rent inflation, results in a net increase in the Court's rent bill by \$759,000 in Fiscal Year 2019.

The Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriations and the Judiciary Information Technology Fund. These objectives serve the goal of furthering access to the Court through the effective and efficient delivery of services and information to litigants, the bar, the public, judges, and staff. For a national court, this access is critical to realizing the mission of resolving disputes by (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, as well as in the overall administration of justice.

Technology remains a critical component of the Court's commitment to high quality service to its various constituencies. To this end, the requested appropriation will enable the Court to support and maintain its information technology program and, in particular, maintain and enhance the security of that program. The program includes cyclical maintenance and, when necessary, replacement, of hardware and software to ensure that the Court's infrastructure will continue to support its present and future technological and telecommunications needs. During Fiscal Year 2017, the Court used its Judiciary Information Technology Fund to strengthen its technological capabilities by: (1) replacing network switches that have reached the end of their useful life; (2) upgrading Windows Server operating systems; (3) purchasing security tools to improve the Court's cybersecurity posture; (4) upgrading and support existing software applications; (5) purchasing new software applications to ensure the continued

operational efficiency of the Court; and (6) replacing computers and peripheral equipment as needed, on a cyclical basis.

In Fiscal Year 2018, the Court plans to expend funds on essential information technology projects to: (1) contract with IT security services to enhance the Court's cybersecurity program; (2) upgrade and support existing software applications; (3) continue to maintain and support our video conference system, digital recording system, data network and voice connections, Virtual Private Network (VPN), Voice Over Internet Protocol (VOIP), and Judiciary Data Communications Network (DCN); and (4) replace computers and peripheral equipment and mobile devices in accordance with the Judiciary's cyclical replacement program. Additionally, the Court will continue to support its long-standing commitment to provide developmental and educational programs for staff on subjects pertaining to technology, cybersecurity, and job-related skills.

In Fiscal Year 2019, the Court will continue to use common and individual office space with maximum efficiency. The Court also will continue its cyclical replacement and maintenance program for equipment and furnishings with the objective of furthering efficiency and cost-effectiveness. Moreover, the Fiscal Year 2019 request once again includes funds for the continued upgrade, support, and maintenance of the Court's internal and perimeter security systems. Further, the Court will continue its efforts to address the educational needs of the bar and Court staff. Finally, the Court will build on its prior efforts to achieve cost savings when negotiating contracts with GSA, FPS, and vendors providing goods and services.

I personally extend my deepest appreciation to the Subcommittee and the entire Congress for recognizing the needs of the Court by providing adequate funding in past fiscal years to maintain current services and enable the court to fulfill its commitment to the administration of justice for all.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted as part of the Judiciary Fiscal Year 2019 Congressional Budget Justification. If the Committee requires any additional information, we will be pleased to provide it.

STATEMENT OF HON. JEREMY D. FOGEL, DIRECTOR
FEDERAL JUDICIAL CENTER
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL
GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

April 18, 2018

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee:

My name is Jeremy Fogel. I have been a United States District Judge in the Northern District of California since 1998 and the Director of the Federal Judicial Center since October 2011. As in prior years, I appreciate the opportunity to provide you with this statement in support of our 2019 appropriation request. The Center's Board, which the Chief Justice chairs and on which the Director of the Administrative Office of the U. S. Courts serves, has approved this request.

The Center's Fiscal Year 2019 Request

The Center's FY19 request is \$29,064,000, an increase of \$542,000 (or 1.9 percent), over the assumed FY 2018 appropriation of \$28,522,000, which is the midpoint between the House mark and the enacted FY17 appropriation. The increase of \$542,000 represents solely standard adjustments to our 2018 base to maintain current services.

We thank the Subcommittee for its support in the recently enacted FY 2018 omnibus appropriations bill. The \$29,265,000 provided fully funds the Center's request. The Center will update its FY 2019 request, which consists of base adjustment only, to account for final FY 2018 appropriations, and transmit revised FY 2019 appropriations requirements to the Subcommittee.

The Center's Contribution to the Courts

The Center's statutory mission is to further the development and adoption of improved judicial administration in the federal courts. Its major statutory functions are research and education for the federal courts.

Research

Our independent, impartial, empirical research on federal litigation and judicial administration contributes directly to changes in procedures and policies that help courts operate efficiently and resolve cases fairly and expeditiously. It also informs our education about effective practices in the courts.

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Most of the approximately fifty major research projects and activities underway in 2018 were requested by the Judicial Conference and its committees.

Education and Training

Center education programs teach judges and court staff about essential skills and knowledge and how to apply them to perform their jobs well.

Orientation programs enable new judges to assume their responsibilities quickly. Continuing education programs educate judges on topics ranging from case-management techniques and new statutes and case law to issues in science and technology that arise in litigation.

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs well.

The need for education and training is great. Educating judges about new legal developments, ethical requirements and effective case management practices always has been and will continue to be necessary. Judges and court managers also seek additional education in effective court management to help address the challenging fiscal climate, use technology effectively and maintain a productive workforce. Probation and pretrial services officers benefit from learning about effective supervision tools that can help protect public safety, rehabilitate offenders, and reduce recidivism. In 2018 the Center also will provide enhanced education and training for judges and staff on workplace conduct and on cybersecurity, two high priority issues for the federal judiciary.

The Center delivers education through in-person programs and a variety of media to provide education and information to judges and staff efficiently. The delivery tools we use include hard-copy publications, and an array of technologies, including our internal and external web sites, web applications, teleconferencing, web-conferencing, podcasts, and streaming video. All of these delivery means help us meet the various needs of a diverse population of judges, managers, and staff in a cost-effective way.

The Center's public website, www.fjc.gov, contains a wealth of information about the Center and its programs, reports, and publications.

Conclusion

Thank you for your careful consideration of our request. I respectfully urge you to provide the Center the 1.9% increase it needs in 2019 to execute its mission. I would be pleased to respond to any questions you may have.

STATEMENT OF HONORABLE WILLIAM H. PRYOR JR
ACTING CHAIR
UNITED STATES SENTENCING COMMISSION
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 18, 2018

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, the United States Sentencing Commission (the “Commission”) appreciates the opportunity to submit this statement in support of its fiscal year 2019 appropriations request. The Commission’s statutory mission—to ensure sound and just federal sentencing policy while prioritizing limited resources to best ensure public safety, as set forth in the Sentencing Reform Act of 1984—continues to be of tremendous importance. Full funding of the Commission’s fiscal year 2019 request will ensure that the Commission can continue to fulfill its statutory mission.

RESOURCES REQUESTED

The fiscal year 2019 request for the U.S. Sentencing Commission totals \$18,548,000 to maintain current services in order to continue to fulfill the statutory duties envisioned by the Sentencing Reform Act of 1984. The fiscal year 2019 request reflects a 1.8 percent increase above a fiscal year 2018 assumed appropriation of \$18,219,000. The fiscal year 2018 enacted level of \$18,699,000 fully funded the Commission’s request. The Commission will update its fiscal year 2019 request to account for final fiscal year 2018 appropriations, and transmit revised fiscal year 2019 appropriations requirements to the Subcommittee. The Commission is not requesting program increases in fiscal year 2019, consistent with its request from fiscal year 2018. The Commission continues to maximize its existing resources and appreciates the funding Congress has provided for the Commission’s fulfillment of its statutory duties.

JUSTIFICATION FOR APPROPRIATIONS REQUEST

The statutory duties of the Commission include: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their intended goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government and synthesizes their interests to effectuate sound federal sentencing policy. Consistent with statutory guidance and Supreme Court case law, the Commission has continued its core mission

to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, and feedback from sentencing courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice community. The Commission continues to expand its specialized training on guideline application and federal sentencing issues to federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.

The Commission actively seeks to increase the fairness and effectiveness of sentencing and improve recidivism outcomes, thereby saving federal resources. The Commission's efforts are calibrated to prioritize public safety and to promote the statutory purposes of sentencing. The Commission will continue these efforts in fiscal year 2019.

Furthermore, the Commission continues to refine its data collection, analysis, and reporting efforts to provide up-to-date data about federal sentencing practices and trends. The Commission disseminates sentencing information efficiently and effectively to fulfill its statutory duties to monitor the operation of the guidelines and to advise Congress on federal sentencing policy. In addition, the Commission analyzes major sentencing issues and regularly reports its findings and recommendations to Congress. Further, the Commission routinely responds to requests from Congress for data and analysis.

The demand for Commission work-products, information, and services continues to increase and expand, as evidenced by the high volume of inquiries for data throughout fiscal year 2017 from the Chairmen and Ranking Members of relevant congressional committees as well as interested congressional offices. This interest only increased in past years as Congress debated bipartisan legislation to reform the federal criminal justice system. The Commission will continue to provide thorough and reliable data in a timely fashion in response to any requests.

In addition, consistent with the priorities of the Judiciary Branch and in coordination with the Administrative Office of the United States Courts, the Commission is continually auditing and updating its cybersecurity measures and expects to invest significantly in that area for the foreseeable future.

SENTENCING POLICY DEVELOPMENT

In fiscal year 2018 and looking forward to fiscal year 2019, the Commission will continue to prioritize ways the guidelines can be made fairer, more efficient, and more effective. In August 2017 the Commission published several proposed amendments to the guidelines held over from the previous amendment cycle. Among the proposed amendments are an expansion of the availability of alternatives to incarceration for certain federal offenders. The Commission is also considering amendments that would respond to recent legislative actions including implementation of the Bipartisan Budget Act of 2015, which increases penalties relating to fraudulent claims under social security programs. The Commission continues to address recommendations from its Tribal Issues Advisory Group regarding how tribal convictions are treated in Chapter Four of the *Guidelines Manual* and the definition of "court protection order"

in the guidelines. The Commission also voted on several long-term priorities, including an ongoing multi-year examination of the overall structure of the guidelines post-*United States v. Booker*.

The Commission has also continued its work on an emerging and urgent issue of public concern—synthetic drugs, including fentanyl, fentanyl analogues, synthetic cathinones, and synthetic cannabinoids. The Commission has issued several requests for public comment and published a proposed amendment to the guidelines pertaining to these substances. The proposals are informed by public comment and expert testimony received at four public hearings the Commission has conducted specifically on the issue of synthetic drugs during fiscal years 2017 and 2018, including fentanyl and fentanyl analogues. The Commission expects to promulgate an amendment addressing this critical issue in fiscal year 2018 and will continue to monitor this developing area in fiscal year 2019.

The Commission continues to review recent and prospective Supreme Court litigation that may directly or indirectly affect the Commission’s priorities and workload. For example, the Commission previously undertook an accelerated review of the guideline definition of “crime of violence” in the career offender guideline in response to uncertainty created by the Supreme Court’s decision in *Johnson v. United States* in which the court struck down as unconstitutionally vague the residual clause portion of the statutory definition of “violent felony” in the Armed Career Criminal Act (ACCA). The Commission released a report to Congress related to this subject entitled *Report to the Congress: Career Offender Sentencing Enhancements*. The report contained recommendations to Congress to narrow the scope of the directive in 28 U.S.C. § 994(h) to offenders with violence either in their instant offense or in their past, and the need for a uniform definition of “crime of violence.” The Judicial Conference of the United States, at the recommendation of the Criminal Law Committee, has endorsed the recommendations of the Commission.

COLLECTING AND REPORTING SENTENCING DATA

The Commission's research staff regularly analyzes current and prior fiscal years' data to identify how courts are sentencing offenders and using the guidelines. Each year the Commission collects and analyzes data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, the plea agreement, the presentence investigation report, the judgment and commitment order, and the statement of reasons form. The Commission analyzes these documents and collects and reports information of interest and importance to policy-makers and the federal criminal justice community.

The Commission's data collection, analysis, and reporting requirements are impacted by the high volume of cases sentenced in the federal system annually. The Commission received approximately 310,000 documents for the 66,873 individual original sentencings that occurred in

fiscal year 2017. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, many analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

Beginning in fiscal year 2016, courts began to use a more detailed Statement of Reasons (SOR) form. The new form provides much more detailed information regarding the specific reasons courts impose sentences, particularly when they impose sentences outside the guideline range. The new detailed SOR permits the Commission to receive more specific and granular feedback regarding the operation of the guidelines, but also requires greater resources to accurately collect and analyze the results. This new information was available for the first time in fiscal year 2017 and enhances the Commission's ability to monitor and report on the operation of the guidelines.

In addition to data on original sentencing, the Commission continues to devote significant resources to report timely data to Congress and the public on implementation of the 2014 "Drugs Minus 2" amendment which reduced penalties provided by the Drug Quantity Table by two offense levels across all drug types. As of January 2018, the Commission received documentation for 48,013 motions for retroactive application of the amendment. A total of 31,089 petitions (or 64.8%) were granted, with an average sentence reduction of 25 months.

The Commission also continues to work to develop sophisticated tools to automatically, and more efficiently, extract certain data fields from court documents and to expand the type of information the Commission can collect and analyze on a routine basis. A prime example of the Commission's use of data extraction is its new initiative to collect information regarding the nature of offenders' criminal history events. Previously, the Commission was able to collect only the number of criminal history points in the offenders' criminal histories. Due to ongoing investments in technological improvements, the Commission has begun to electronically extract information regarding the nature of those prior events. The Commission extracted criminal history information for a sample of federal offenders sentenced in fiscal years 2014 and 2015 and has already begun to use that new information in responding to certain congressional inquiries. In fiscal year 2018, the Commission began to extract that information for all federal offenders, not just a sample, and, resources permitting, the Commission intends to continue this endeavor going forward.

The Commission continues to focus on making its data and research more readily accessible and in more easily understood ways to Congress, the courts, the public, and the press. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's *Sourcebook of Federal Sentencing Statistics*, which is available in print and online. The Commission's web-based "Interactive Sourcebook of Federal Sentencing Statistics" (ISB) uses the same tables and figures but enhances the *Sourcebook* by adding analyses not found elsewhere, including analyses of sentence length by the primary guideline the court used at sentencing, amount of loss in fraud cases, and age of offenders in drug cases for each major drug type. The ISB allows users to recreate and customize tables and figures, for example by circuit,

district, or state, and has improved the transparency and accessibility of its sentencing data to the public.

In order to provide the timeliest information on national sentencing trends and practices, the Commission also disseminates on its website key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time.

As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it also considers the impact of these amendments on the federal prison population. The Commission is asked often by Congress to complete prison and sentencing impact assessments for proposed legislation, and the Commission makes its prison and sentencing impact analyses available on its website.

The Commission also updated and expanded its Quick Facts series first introduced in fiscal year 2013. The Quick Facts series is designed to provide the concise facts about a single area of federal crime in an easy-to-read, two-page format. The Commission also updated the Quick Facts series in fiscal year 2017, including overviews of offenders in the Federal Bureau of Prisons, offenders convicted of offenses carrying mandatory minimum penalties, career offenders, “white-collar” offenders, drug trafficking offenders by drug type, robbery offenders, and many more.

CONDUCTING RESEARCH

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes current and prior fiscal years' data to identify how courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, many analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

For example, the Commission continues to research and assess the impact of mandatory minimum penalties on federal sentencing, an issue particularly important because more than half (56.4%) of federal inmates in custody, as of February 2017, were convicted of an offense carrying a mandatory minimum penalty. The Commission's ongoing series of publications on the topic build on previous reports—including its 2011 *Mandatory Minimum Report*, which contained several general and specific recommendations to Congress. The Commission believes this new series will contribute significantly to the consideration of federal sentencing policy by Congress and others in fiscal years 2018 and 2019.

The Commission released the first three publications in this series in fiscal years 2017 and 2018. The Commission's 2017 *Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System* highlights recent developments regarding the charging of offenses carrying a mandatory minimum penalty and provides updated sentencing data regarding the use and impact of mandatory minimum penalties. Among the findings in the publication, in fiscal

year 2016, the average sentence length for offenders convicted of an offense carrying a mandatory minimum penalty was 110 months of imprisonment, nearly four times the average sentence (28 months) for offenders not convicted of such an offense.

The second publication in this series, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, focused on the impact of drug mandatory minimums in significant part because almost half (49.1%) of federal inmates as of September 30, 2016 were drug offenders, and almost three-quarters of them (72.3%) were convicted of an offense carrying a mandatory minimum penalty. This publication analyzes drug mandatory minimums, their impact on the federal prison population, and differences observed when analyzing each of the five most common drug types in the federal caseload. Among the findings in the publication is that in fiscal year 2016, over half (52.8%) of offenders convicted of an offense carrying a drug mandatory minimum penalty faced a mandatory minimum penalty of ten years or longer.

The most recent publication in this series, *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System*, was just released in March 2018. This latest report focuses on the application of mandatory minimum penalties specific to firearms offenses, which are the second largest category (16.8%) of offenses carrying mandatory minimum penalties in the federal system following drug offenses. Among the findings in the publication is that offenders convicted under 18 U.S.C. § 924(c) received an average sentence of over 12 years of imprisonment in fiscal year 2016. The average sentence for offenders who were subject to the mandatory minimum penalty for multiple counts of conviction under section 924(c) were exceptionally long—almost 36 years—because the statute requires the sentences for each count to run consecutively. Black offenders were most impacted by this statutory provision as they accounted for more 70.5 percent of offender convicted of multiple counts under section 924(c). The Commission released this publication in March 2018.

The Commission also continues to focus its research on recidivism, drawing upon partnerships across the federal criminal justice system. The Commission combines its data with data from the Department of Justice and the Administrative Office of the U.S. Courts to develop a comprehensive trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community.

In fiscal year 2017, the Commission published *Recidivism Among Federal Drug Trafficking Offenders*, which analyzed more than 10,000 federal drug trafficking offenders over an eight-year follow-up period. Among the findings in this publication is that one-half (50%) of federal drug traffickers released in 2005 recidivated by being rearrested for a new crime or rearrested for a violation of supervision conditions. While this figure is significant, it is substantially lower than the 76.9 percent of state drug offenders released in 2005 who recidivated within five years, as reported by the Bureau of Justice Statistics.

In fiscal year 2017, the Commission also published *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders*, which analyzed how various components of criminal history computations in Chapter Four of the *Guidelines Manual* are associated with

recidivism. In fiscal year 2018, the Commission published *The Effects of Aging on Recidivism Among Federal Offenders* which analyzes age at the time of release along with other factors. The Commission plans to continue this series with a study of violent offenders.

In March 2018, the Commission released *Recidivism Among Federal Offenders Receiving Retroactive Sentencing Reductions: The 2011 Fair Sentencing Act Guideline Amendment*. This study analyzes the recidivism rates for offenders who received the retroactive benefit of the guideline amendment implementing the Fair Sentencing Act of 2010, which reduced the statutory mandatory minimum penalties for crack cocaine offenses. While Congress did not make the statutory changes retroactive, the Commission did make the ensuing guideline amendment retroactive. The Commission found that recidivism rates were virtually identical for offenders who were released early through retroactive application of the FSA guideline amendment and offenders who had served their full sentences before the FSA guideline reduction retroactively took effect. Over a three-year period following their release, both groups had a recidivism rate of 37.9 percent.

As part of its statutory mission to avoid unwarranted sentencing disparities, the Commission also studies demographic and sentencing results. In fiscal year 2017, the Commission published *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, which examines whether the length of sentences imposed on federal offenders is correlated with demographic characteristics of those offenders. This report is the third analysis the Commission has published exploring the relationship between demographic factors, such as race and gender, and sentencing outcomes. The report generally finds that the demographic differences previously reported persist.

The Commission has also observed that many federal district courts have initiated specialized court programs to increase the use of alternatives to incarceration for certain types of offenders. As part of its recent consideration of alternatives to incarceration, in fiscal year 2017 the Commission published *Federal Alternative-to-Incarceration Court Programs*, a qualitative analysis of five of these programs. This publication reviewed the recent emergence on the federal level of alternative-to-incarceration court programs and considered how they fit within the framework of the Sentencing Reform Act of 1984 and the *Guidelines Manual*. The Commission also conducted a public hearing focusing on federal alternative-to-incarceration programs, at which the Commission received testimony from experts and federal district judges who have presided over three of these programs. As policymakers and federal court officials consider the efficacy and legal questions surrounding these programs, the Commission believes its publication will contribute significantly to their discussions.

The Commission also published *An Analysis of the Implementation of the 2014 Clemency Initiative*, which analyzes the almost 1,700 sentence commutations granted under President Obama's 2014 Clemency Initiative. It provides extensive data about the offenders who received a sentence commutation and the extent to which they appear to have met the announced criteria

for the initiative. It also provides data about additional offenders who appear to have met the criteria but who did not receive a sentence commutation.

The information and data contained in the Commission's reports and publications continue to contribute significantly to the consideration of federal sentencing policy by Congress and others.

RESPONDING TO CONGRESSIONAL INQUIRIES

Each year the Commission receives frequent inquiries from Congress to complete prison and sentencing impact assessments using real-time data of sentencing trends related to proposed and pending legislation. These assessments are often complex and time-sensitive and require highly specialized Commission resources.

In fiscal year 2016 and fiscal year 2017, the Commission experienced a surge in sentencing data inquiries, particularly from the Chairmen and Ranking Members of relevant congressional committees, as well as interested congressional offices. This increase was spurred by Congress' ongoing consideration of bipartisan legislation to reform the federal criminal justice system. In fiscal year 2017 and fiscal year 2018, the Commission responded to numerous requests from Congress and has also already responded to dozens of data inquiries from the U.S. House and Senate Judiciary Committees.

The Commission also fills more general data requests from Congress on issues such as drug trafficking, immigration, fraud, and sex offenses and provides circuit, district, and state-wide data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress.

The Commission also responds to numerous requests for data analyses from federal judges, including specific data requests relating to pending cases. The Commission's ability to provide these analyses on demand and with real-time data provides a unique and helpful resource to judges.

TRAINING, OUTREACH, AND ENGAGEMENT

The Commission continues to fulfill its statutory duty to provide seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors and defense attorneys on federal sentencing issues, including application of the guidelines. In fiscal year 2017, commissioners and Commission staff conducted training programs with members of the federal courts, practitioners, and others involved in the sentencing process in nearly all 94 federal districts, through discrete education programs, including programs for specific districts and circuits, specialized training for new probation officers and for federal prosecutors, and training programs for district and circuit court judges.

In fiscal year 2016, the Commission identified a need for training federal judges on sentencing guidelines and related issues. As a result, in June 2016 and June 2017, the Commission initiated annual training seminars specifically tailored to federal judges. Approximately 100 federal judges attended each program. The 2018 annual seminar for judges will be held in San Francisco, California, and resources permitting the Commission intends to meet this specialized training need on an annual basis going forward.

In fiscal year 2017, the Commission held two annual national training seminars in Baltimore, Maryland and Denver, Colorado, with a total attendance of more than 800, including federal probation officers, prosecutors, defense attorneys, and judges. Commissioners and Commission staff also participated in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion around federal sentencing issues. In fiscal year 2018, the Commission will hold one, larger national seminar in San Antonio, Texas.

In fiscal years 2017 and 2018, in a collaborative effort, the Commission's Office of General Counsel, Office of Education and Sentencing Practice, and Office of Legislative and Public Affairs provided guideline and federal sentencing training to congressional offices at their request. Commission staff also held multiple data briefings for congressional staffers on Capitol Hill to present findings from the Commission's recent reports and take questions from attendees. The Commission also provided general educational trainings on the guidelines to interested public service and advocacy groups. The Commission stands ready in fiscal year 2018, as well as fiscal year 2019, to continue to offer individualized and group educational training opportunities to congressional staff as Congress considers sentencing and crime policy.

The Commission increasingly is relying on distance and online learning as part of its cost-containment efforts. The Commission continued to conduct sentencing-related webinars and webcasts in fiscal year 2017 and will increase its distance learning offerings in fiscal year 2018 and fiscal year 2019. In fiscal year 2016, for the second year the Commission released an online interactive e-Learning program to educate the public as well as judges, probation officers, and practitioners, about guideline amendments, including the August 2016 crime of violence amendment. In fiscal year 2017 for the third year, the Commission developed an online interactive e-Learning program to educate the public, as well as judges, probation officers, and practitioners, about recurring issues in guideline application related to criminal history determinations. This work continues in fiscal year 2018.

The Commission coordinates with the Administrative Office of the U.S. Courts to meet with all those nominated to a federal judgeship and inform them of upcoming judge trainings and other Commission resources. At the same time, the Commission continues to coordinate with the Federal Judicial Center on dissemination of information to new judges and, in fiscal year 2017, each newly appointed judge received a copy of the Commission's publication, *Federal Sentencing: The Basics*, a comprehensive primer on the federal sentencing system which was also turned into an interactive e-Learning course.

A primer is sent to each newly appointed judge, and the online course is assigned by the Federal Judicial Center as a prerequisite for attending Phase I training for District Court Judges. “The Basics” has become a standard recommended course for those new to federal sentencing, or for those wanting a refresher before attending an in-district Commission training program. The Commission plans to release several scenario-based e-Learning courses on frequently recurring guideline application issues in fiscal year 2018.

In fiscal year 2016, the Commission launched a redesigned website modernizing the aesthetic and improving search functionality. The redesigned site improves navigation of the online versions of the *Guidelines Manual* and *Sourcebook of Federal Sentencing Statistics*. The redesigned site is a more robust resource for policy-makers and the federal courts, and describes and contextualizes the Commission’s policy work, thereby increasing public engagement in the guideline amendment process. In fiscal year 2017, the Commission received over 1.5 million hits and averaged approximately 29,000 users each month.

The Commission also has undertaken several additional projects aimed at improving access to the *Guidelines Manual*, including a new interactive online manual that will provide the user the history of each guideline provision and a web-based application which enables the user to efficiently access the *Guidelines Manual* on a variety of devices, including desktops and mobile devices. Launched in March 2018, the Guidelines app is accessible through any internet browser and features new tools to assist in understanding and applying the federal sentencing guidelines. The Commission also made efforts to improve online access to historical documents by converting and publishing many of the Commission’s archived records. These projects will help court personnel, legislators, and other criminal justice stakeholders refer to important Commission documents in their legal research and policy work.

In fiscal year 2017, the Commission also increased its public outreach efforts through the new cloud communications tool and an expanded social media presence. The Commission established its first social media account three years ago and continues to gain followers. In fiscal year 2017, the Commission established a new LinkedIn profile as an additional communication tool. The Commission will continue to improve its website, social media, online education and outreach efforts.

In fiscal year 2017, the Commission received a record amount of public comment on proposed priorities and amendments. The Commission continues to receive substantial public comment in fiscal year 2018. To manage and streamline the intake process, the Commission recently designed a digital public comment database that enables the Commission to organize, distribute, and archive public comment in a timely and less resource-intensive fashion. The Commission will continue to utilize and improve the database as the Commission’s engagement with the public continues to grow.

SUMMARY

The Commission is an expert, bipartisan body that works collaboratively with all three branches of government on matters of federal sentencing policy. The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, to ensure sound and just federal sentencing policy and to prioritize limited resources to best safeguard public safety.

The demand for the Commission's various work products continues to increase. In recent years, the Commission has prioritized increased public access to its sentencing data, information, analyses, and training. The Commission has expanded the availability of resources on its website and will continue doing so in fiscal year 2019.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal 2019 appropriations request of \$18,548,000 will ensure that the Commission can continue to fulfill its various statutory duties efficiently and effectively.

Mr. GRAVES. Great. Thank you, Judge. Before we go to questions, we will recognize Director Duff to share any remarks he may have. Thank you again, Director.

OPENING STATEMENT OF DIRECTOR DUFF

Mr. DUFF. Thank you, Mr. Chairman and Ranking Member Quigley. It is great to be with you and members of the subcommittee again today. I am pleased to appear before you and to provide also very brief opening remarks. A more detailed written statement has also been provided to the subcommittee. I first will join the thanks of Judge Lungstrum for our 2018 appropriations. We are very grateful for that.

My first task today as Director of the Administrative Office of the United States Courts is to present its budget. For fiscal year 2019, the A.O. requests \$89.9 million, which represents current services levels.

Although there are no new spending initiatives planned for fiscal year 2019, our request will provide critical funding to sustain the work of the A.O. as it facilitates the judiciary's national programs and policymaking processes, and supports courts, probation and pre-trial services offices, and Federal defender organizations around the country.

My second task is as secretary of the Judicial Conference of the United States and that is to ask for the subcommittee's support for a handful of Judicial Conference priorities that are beyond the Administrative Office's own budget request and extend to the judiciary as a whole.

The first of these priorities is continued, 1-year extensions of eight temporary judgeships whose authorizations otherwise would expire in fiscal year 2019. Without these extensions, affected districts could lose a critically needed judgeship, which will increase caseloads for the remaining judges and slow the processing of cases.

While we continue to hope that the authorizing committees will create new permanent judgeships in these districts, we respectfully request your assistance in obtaining the necessary interim extensions.

A second Judicial Conference priority for which we are seeking the subcommittee's support is the sufficient funding of judiciary needs within the budget of the General Services Administration. For fiscal year 2019, we request \$25.4 million for GSA's Capital Security Program. The Capital Security Program addresses serious security deficiencies in courthouses where renovations are viable alternatives to new construction.

In addition, we ask that any funds for new courthouse construction be applied consistent with the Courthouse Project Priorities plan that is in effect at the time the appropriation is made.

We understand that there are many competing demands for the funding in your subcommittee's jurisdiction and for that reason remain very grateful for your generous and continued support of the judiciary's priorities and needs. That support directly enables the judiciary to perform its vital constitutional role.

As always, we hope to retain your confidence and your support moving forward through another year of effective performance of

our duties and careful, efficient stewardship of taxpayer resources. That concludes my opening remarks, and I would be pleased to answer any questions you may have.

**STATEMENT OF
JAMES C. DUFF, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

April 18, 2018

INTRODUCTION

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, I am pleased to appear before you today in my dual roles as Director of the Administrative Office of the United States Courts (AO) and as Secretary of the Judicial Conference of the United States. As Director of the AO, I am here to discuss the work of my organization and present its fiscal year 2019 budget request. As Secretary of the Judicial Conference, which is the policy making and governance body for the Judiciary, I offer my support for the overall request for the entire Judicial Branch and ask for the Subcommittee's assistance on a handful of Conference priorities that extend beyond the Judiciary's budget, including the extension of temporary judgeships and the sufficient funding of judicial priorities within the General Services Administration's budget.

Before turning to the substance of my remarks, I would first like to make two acknowledgements. The first is for my fellow witness, Judge John Lungstrum, who assumed the chairmanship of the Judicial Conference Committee on the Budget on February 1 of this year. Judge Lungstrum's predecessor, Judge Julia Gibbons, served superbly in that capacity for many years and testified before this Subcommittee and its forerunners a dozen times. We are grateful for her excellent work and extremely confident that Judge Lungstrum will represent the branch with equal effectiveness and distinction.

Second, I would like to acknowledge the Subcommittee for its generous and consistent support of the Judiciary's needs. This support was clearly reflected in the recently enacted fiscal year 2018 appropriations omnibus, which provided funding to meet fully the Judiciary's budgetary requirements for the year. We are cognizant of the constraints you face and the many competing demands for the resources under your control, and we remain extremely grateful that the Subcommittee has continued to make the Judiciary a funding priority despite these challenges. We hope to maintain your confidence and support through another year of successful performance of our constitutional and statutory duties and efficient stewardship of taxpayer resources through the continuation of our longstanding cost containment program.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

The federal court system is decentralized in many ways. Significant operational and administrative authority rests with judges, clerks, federal defenders, and probation and pretrial chiefs across the country. They have the flexibility to make most decisions according to their local circumstances and priorities, guided by the policy framework established by the Judicial Conference. The role of the AO is to facilitate both ends of that management process. We staff the Judicial Conference and its 25 committees as it sets policy on court administration, resource management, space, security, and other important topics. At the same time, the AO provides support to judges, court employees, and federal defenders as they execute that policy through their local authorities. Our support functions include the direct provision of services; the development and implementation of new technologies and business processes for use in the field; and the performance of branch-wide administrative functions that cannot be efficiently handled at the judicial district or circuit level.

The AO's goal is to both provide the best services in government for our colleagues around the country and foster a challenging, rewarding work environment within our own organization. I am very pleased with the progress we continue to make in pursuit of our goal and happy for this opportunity to share just a few examples of the important work of the AO.

Providing Services to the Branch

The AO provides a long list of direct services to the court and federal defender communities, including payroll, auditing, and emergency management. Our capabilities in that latter category were sorely tested this year as we endured three large hurricanes and a devastating wildfire, all within a two-month period. I am proud of the dedication and resilience of Judiciary employees in places like California, Texas, Puerto Rico, and the U.S. Virgin Islands. These individuals faced mortal danger and the catastrophic loss of homes and property but still found the time and energy to assist one another and to ensure that the critical work of the Judiciary continued uninterrupted to the greatest extent possible. Their heroic local efforts were strongly aided by the AO, principally through our Judiciary Emergency Response Team (JERT), which serves as a central coordinating body for communications and assistance during natural disasters and other emergencies. The JERT was in constant contact with affected districts, giving them the latest updates from our federal partners, sharing best practices, and directing resources for administrative needs like generators, remote IT services, and temporary employee relocation. Other AO employees beyond the JERT also contributed to our emergency response. For example, our Probation and Pretrial Services Office helped to take over location monitoring duties for offenders in districts where the local probation staff was unable to operate as normal. Emergency management is truly a team effort, and our team performed exceptionally well to

maintain court operations and continue the administration of justice while enduring these historically challenging conditions.

Beyond direct services, the AO also works to develop and provide new technology and business processes for the courts and federal defenders. We have multiple avenues for deploying these new technologies and practices to the field, but one of the biggest efforts is our sponsorship of regular operational and financial forums for court and defender staff. These forums provide physical and online gatherings for employees around the country to obtain updates on new policies or tools; share best practices; get hands-on training; and establish or strengthen working relationships with colleagues in different judicial districts or circuits. The most recent forum to occur was our biannual Financial Forum, which took place earlier this month. Like each of these events, AO staff and court and defender office experts spent many hours planning and conducting this forum, but it represents one of our most comprehensive and detailed opportunities to disseminate information about the best and most current technologies and practices for the administration of justice.

Finally, in the AO's role as a facilitator of Judiciary policymaking, I was recently asked by the Chief Justice to lead a working group of judges and other senior executives, with staff support from AO offices, to assess the adequacy of the branch's safeguards to protect its employees from workplace misconduct. I fully support the current movement to confront and address issues of sexual harassment and inappropriate workplace conduct. We are committed to providing a work environment in which all employees feel valued for the quality of their work, empowered to speak up if they have been mistreated, and supported while their concerns are addressed without retaliation. Our standard for behavior in the workplace is that even one incident of workplace harassment is one too many, and our focus has been on removing barriers to report and address any such incidents. The Federal Judiciary Workplace Conduct Working Group is making progress in its assessment, and we already have implemented several actions designed to address issues identified in the course of our work to date. The Working Group plans to complete its review in the next two months and provide recommendations both for immediate implementation and for referral to the relevant committees of the Judicial Conference to develop the best possible Judiciary policy on this topic.

Creating a Stronger AO

Beyond the AO's support for the operations of the Judiciary as a whole, we are also always working to improve our own operations. For example, the AO is currently deploying a whole new suite of information technology tools that will make it easier for AO employees to share and co-edit products with one another; access their work documents remotely and securely; and communicate with coworkers via a variety of mechanisms to improve collaboration and information sharing. We refer to this effort as the Unify Project, and look forward to the project's subsequent expansion to courts after successful implementation at the AO.

While continuing to seek better and more effective ways of doing business, we are also cognizant of the need to find savings and other efficiencies within our programs and activities. We ask much of the court community in terms of cost containment, and it is important for the AO to participate fully in that effort. Currently, we are revalidating and adjusting our use of contractor positions. For many job functions, we have determined that it is less expensive to hire government employees than to procure services from outside firms. In those instances, we are working to reduce our use of contractors and have already identified contractor conversions that will lower overall requirements by \$3 million annually. As an additional benefit, those conversions will also improve our ratio of federal employees to contractors to provide appropriate supervision and oversight to all contracted operations.

As we continue to carry out these and other projects, I remain committed wherever possible to formal evaluation of our effectiveness and efficiency. In 2015, we undertook our first significant attempt to assess the AO's performance objectively by seeking the views of our employees through the administration of the Office of Personnel Management's Employee Viewpoint Survey. While the results of that survey were positive, both in absolute terms and relative to the average results of Executive Branch agencies, I am pleased to report that the administration of the survey again in 2017 demonstrated further improvement. The AO's scores increased between 2015 and 2017 across virtually every category and question, including those areas identified by the 2015 survey as priorities for improvement. We will continue to use our survey results to guide our internal management decisions and to benchmark our progress against the rest of government and against ourselves over time.

AO Fiscal Year 2019 Budget Request

To facilitate the work of the AO in fiscal year 2019, our appropriation request totals \$89.9 million. That is an increase of \$1.9 million, or 2.2 percent, over the fiscal year 2018 appropriation assumption we used at the time our budget request was built. As with all Judiciary accounts, we will re-estimate our fiscal year 2019 request in light of the enactment of the fiscal year 2018 omnibus and advise the Subcommittee of any necessary technical changes. The policy and priorities behind our request, however, will not change, and that includes our commitment to efficiency and to maximizing the resources that can be invested directly into the work of the courts and the federal defender offices. As a result, the AO's budget request represents a current services level only. The requested funds will be used to maintain current staffing by providing for the pay and benefit adjustments and adjustments for goods, services and contracts projected for fiscal year 2019, but there are no new spending initiatives included. Consistent with the fiscal year 2019 budget proposed for Executive Branch employees, the AO's budget request does not include a 2019 Employment Cost Index or locality pay adjustment for personnel.

TEMPORARY JUDGESHIPS

Having the correct number and distribution of judicial officers is critical to the effective administration of justice. The Judicial Conference regularly reviews the number and location of district, circuit, and bankruptcy judges to assess whether existing judgeships are sufficient and deployed in the appropriate judicial districts. To the extent that these assessments determine that additional judgeships are needed, those recommendations are communicated by the Judicial Conference to the House and Senate Judiciary Committees for congressional action.

Over the years, Congress has chosen occasionally to create temporary, rather than permanent, new judgeships. Temporary judgeships expire after a specified period of time, and a judgeship is lost in the affected court upon the first vacancy—through death, retirement, or elevation to a higher court—occurring after an expiration. While temporary judgeships allow the Judiciary to increase judicial resources in districts with workload needs, temporary judgeships are not an appropriate solution for districts with persistent heavy workload. In those cases, the creation of a new permanent judgeship is necessary, and the Conference has a longstanding policy to advocate for the conversion to permanent of all temporary judgeships in districts where the workload indicates a permanent investment is needed.

Unfortunately, bills to act on our judgeship requests have been infrequent, and, in the absence of such authorizing legislation, we have found it necessary to ask this Subcommittee to use the annual appropriations process to preserve existing temporary judgeships by extending their expiration dates in one year increments. We are exceptionally grateful to have always had your support for these extension requests, which in recent years have preserved as many as ten temporary district judgeships and seven temporary bankruptcy judgeships.

Despite the relative rarity of judgeship bills, I am pleased to note that several months ago Congress enacted legislation creating four new temporary bankruptcy judgeships and reauthorizing and extending 14 temporary bankruptcy judgeships, including the seven judgeships that this Subcommittee had been protecting. This means that we no longer need the Subcommittee to take any further action on these bankruptcy judgeships through its fiscal year 2019 bill. Due to continuing uncertainty about the ability of the House and Senate Judiciary Committees to address our district judgeship needs in the upcoming year, however, our fiscal year 2019 request includes, once again, the legislative language needed to extend for one year our temporary district judgeships in Arizona, California Central, Florida Southern, Kansas, Missouri Eastern, New Mexico, North Carolina Western, and Texas Eastern. We continue to ask for your support of these requested extensions, without which the administration of justice in the affected districts would be disrupted and delayed.

JUDICIARY CONSTRUCTION PRIORITIES

Like most other federal entities, the Judiciary is a tenant of the General Services Administration (GSA). We rely on GSA to rent us sufficient space for our operations; to

maintain and improve that space as needed; and to construct new space for our use when required. We have worked diligently to forge a strong working relationship with our partners at GSA, and the Judicial Conference has a vested interest in ensuring that GSA receives the resources and other support it needs to execute our space priorities adequately. For the purposes of this Subcommittee, those priorities are embodied in two significant programs: the Judiciary Capital Security Program (CSP) and new courthouse construction.

Before turning to the details of those programs, I would like to thank the Subcommittee for the fiscal year 2018 emergency appropriations you provided to GSA to repair court facilities in Puerto Rico and the U.S. Virgin Islands that were damaged by Hurricanes Irma and Maria. This funding is needed to ensure these facilities are returned to their pre-hurricane condition and can fully meet the operational needs of the courts as they continue to serve our fellow citizens in these locations.

Capital Security Program

The CSP is a special emphasis program within the GSA Federal Buildings Fund and was designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new construction. By undertaking projects such as constructing secure corridors and elevators, enclosing prisoner drop-off areas, and reconfiguring security screening areas, the CSP creates measurable improvements in facility security at reasonable cost. For example, the federal building and courthouse in Benton, Illinois, had a Facility Benefit Assessment security score of only 46.1 out of 100 prior to receiving CSP-funded upgrades. After completing CSP work, that facility's security score was re-measured at 80.2, a 74 percent increase that was achieved with an investment of only \$4.7 million.

Since its inception in fiscal year 2012, the CSP has supported projects in Georgia, Illinois, Kentucky, Puerto Rico, the U.S. Virgin Islands, Louisiana, Texas, Arkansas, and North Carolina. Projects are selected through a collaborative process involving the Judiciary, the United States Marshals Service, and GSA and then implemented with GSA funding. For fiscal year 2019, we have identified \$25.4 million of CSP priorities for work in Detroit, Michigan, and Augusta, Georgia, and request that the Subcommittee provide the necessary funding to GSA to ensure that these priorities can be addressed in full.

New Courthouse Construction

The new courthouse construction program is designed to resolve space deficiencies that are much broader than the security issues addressed by the CSP. When a court facility faces not only security problems, but also a critical lack of sufficient courtroom or chambers space, deteriorated building infrastructure, and chronic maintenance issues, the most feasible solution is to build a new courthouse or an annex to an existing courthouse to meet the operational needs of the court. The construction of those new facilities or annexes is funded by GSA.

As you know, GSA and the Judiciary continue to execute the unprecedented courthouse construction appropriation provided in fiscal year 2016. We have projects fully funded and moving forward now at courthouses or joint federal buildings/courthouses in nine locations (Nashville, Tennessee; Toledo, Ohio; Charlotte, North Carolina; Des Moines, Iowa; Greenville, South Carolina; Anniston, Alabama; Savannah, Georgia; San Antonio, Texas; and Greenville, Mississippi) and a tenth project (Rutland, Vermont) awaiting authorization. If all goes according to plan, we expect to complete work on each of these projects between fiscal year 2020 and fiscal year 2023.

In addition to helping with the management of the fiscal year 2016 construction portfolio, we are now preparing to execute three additional courthouse construction projects that were just funded in the fiscal year 2018 omnibus. This new portfolio is comprised of the top three priorities as reflected on the fiscal year 2019 *Courthouse Project Priorities (CPP)* list, including a new courthouse in Harrisburg, Pennsylvania (which received partial funding in fiscal year 2016 and is fully authorized), and new courthouses in Huntsville, Alabama, and Fort Lauderdale, Florida. As always, we are very grateful for the Subcommittee's support of our construction priorities, as functional, efficient, and safe court facilities are a necessary precursor to the effective administration of justice. We remain committed to ensuring that all of our ongoing courthouse construction projects are carried out in a timely and cost-effective manner and look forward to their completion.

The Judicial Conference Committee on Space and Facilities will revise the *CPP* this summer to reflect the outcomes of the fiscal year 2018 appropriations process. This will entail the removal of the fully funded projects and could result in the reprioritization of the remaining projects from the current *CPP* (Chattanooga, Tennessee; San Juan, Puerto Rico; McAllen, Texas; and Norfolk, Virginia) and/or the integration of new projects. A project becomes eligible for inclusion on the *CPP* after GSA has completed a feasibility study of the facility, if the result of that study is a recommendation that a new courthouse or annex be built. Feasibility studies are underway or planned in Hartford, Connecticut; Greensboro/Winston-Salem, North Carolina; Clarksburg, West Virginia; Bowling Green, Kentucky; and Green Bay, Wisconsin. In the event that Congress makes construction funding available to GSA for more courthouse projects in fiscal year 2019, we ask that such funding be allocated consistent with the priorities of the *CPP* that is in effect at the time that the appropriation is made.

CONCLUSION

Chairman Graves, Ranking Member Quigley, and members of the Subcommittee, thank you for your ongoing and generous support of both the AO and the Judicial Branch as a whole. I understand that you will likely be faced with difficult decisions and tradeoffs as you allocate funding to the many different agencies within the Subcommittee's jurisdiction. As you make your decisions, I hope you will keep in mind the unique constitutional role of the Judiciary and the importance of its effective functioning to the health and vibrancy of our democracy. By

providing the resources needed by the AO and the rest of the branch, as well as supporting the continued extension of temporary judgeships and the funding of Judiciary priorities at GSA, you are ensuring that the Judiciary continues to perform its vital role as intended and required.

Thank you again for the opportunity to testify today. I would be pleased to answer your questions.

JUDICIAL VACANCIES

Mr. GRAVES. Thank you both. I have a few questions, and I know Mr. Quigley will as well. When Judge Gibbons was before us last time, we had a discussion about judicial vacancies. Can you give us an update on what you have seen in terms of the filling of these vacancies? It seemed like it was well over 100 at the time. Has it improved?

Mr. DUFF. Judicial vacancies are being filled in the current Congress and the administration. But we are also having judges take senior status, which creates new vacancies. We have about 140 vacancies at the moment, and it is important that we do fill those as best we can.

Of the 140 vacancies that exist, 68 of those vacancies are what we consider emergencies, and that is a determination that is made by a couple of formulae. One is having an excess of 700 cases per judge in a particular district where a judgeship is vacant. Another is if there is a greater than 18 months vacancy period of time. So, vacancies remain a very important part of our agenda and we work to see that they are filled as best we can.

Mr. GRAVES. We recognize that it is a little bit out of your control given the Senate confirmation process. It seems to be a little slower than we would like to see right now. How do you reflect the vacancies in your budgeting? That has got to be a challenge.

Judge LUNGSTRUM. What we generally do is make an assumption based on historical trends. And then, of course, we have to adjust if, in fact, there are fewer confirmations than history would predict; then, that means we have allowed for too much. On the other hand, if there are more, then we go the other direction.

With this number of vacancies, should they, in fact, be filled over a short period of time, that would be a budgetary pressure because we are not predicting that necessarily based on historical figures. So, that higher than usual vacancy number could play out as requiring some adjustments in terms of how to pay for that.

CYBERSECURITY

Mr. GRAVES. Addressing cybersecurity, I think each of you referenced it in your statements as one of the pressing issues. I think we recognize that and I know Mr. Quigley joins me with concerns about those issues throughout all the different agencies we oversee in this committee. Can you give us a little update on the judiciary and cyber readiness?

I know we provided, \$85 million in the last spending bill. There was a new request for \$95 million this year. Can you justify the new spending? Is it something we should expect each year?

Judge LUNGSTRUM. Let me sort of start with the last part of the question and work back. The answer is yes, sadly, because the people who are out there trying to engage in activities that we do not want to have take place keep developing new approaches, new techniques. They try to outsmart whatever hardware, software, and behavioral techniques are used to defeat them.

So, our thought is that we are probably going to be looking at an ongoing request at about this year's level because it is just that complicated an issue. I am not a technology person, in terms of my

own personal skills and understanding, but the best minds that we can find tell us that it is just going to be an ongoing consideration. We have to deal with attempting to prevent intrusions. We have to deal with recognizing when somebody has beaten the firewalls or whatever and deal with the problem if that should occur.

And we have to make sure that the user, both court personnel and judges alike, are very sensitive to all of these activities. And that simply, both in terms of hiring people and in investing in various programs, is an expensive proposition. And frankly, I think we are just left with a situation of having to come back and continue to ask for a significant amount of funding to deal with what is our number one administrative priority within the judiciary.

Mr. GRAVES. So, as you look at spending this money, it will be on people, infrastructure, software. A combination of things. We met with GSA earlier this week and they have a priority as well government-wide.

I know our committee has concerns about rebuilding a lot of silos that ultimately are not connected, or are not communicating, or are not in parity with software versions, or modern technology, or abilities. How do you keep parity? And how do you work with the GSA as well?

Judge LUNGSTRUM. Jim, I will defer to you on that.

Mr. DUFF. Sure. And we have additional challenges in that we are coordinating among all the districts around the country and all the circuits around the country in our efforts. So, it is a massive coordination challenge for us. We have devoted substantial resources, both in, thankfully, the appropriations we have received and the people we have put on the task.

Trying to stay ahead of those who are trying to break into the system is a challenge, not only for us in our branch, but for government and business as a whole, as you know. But just to give you a sense of that challenge, we have had in fiscal year 2018 already 11 million attempted break-ins to the system. So, it is, as you have articulated, a challenge. But it is one that, as Judge Lungstrum mentioned, is our highest priority in the branch.

Mr. GRAVES. Great, thank you. Mr. Quigley, you have any questions?

FEDERAL DEFENDER STAFFING

Mr. QUIGLEY. Thank you, Mr. Chairman. Thank you again for being here. The Federal Defender Program took a hit during sequestration. Can you give us an update of where we are now and how your fiscal year 2019 request addresses that?

Judge LUNGSTRUM. Thank you for asking about that because that is a subject, I think, that we are very much desirous of making sure we get it right with our request, and I think we have. The defenders lost a considerable amount of staff during the period of sequestration and we have had to work hard to get them built back up. And that has largely been accomplished back to the pre-sequestration levels.

With this year's request, we would then put them up to approximately 98 percent of their work measurement formula that is relatively new to the defenders.

Mr. QUIGLEY. What percentage of cases do they handle?

Judge LUNGSTRUM. I cannot give you an accurate number with that, compared to Criminal Justice Act (CJA) panel attorneys, other than based on my own district. I know in my own district it is about a 60/40 split. With the work measurement formula, I think we have gotten more people in defenders' offices. So, that means that defenders can take cases, other than where there is a conflict, to a greater degree than they were able to before, which lowers the CJA panel attorney utilization.

On the other hand, we do not want to keep CJA panel lawyers from handling cases too much, diverting cases to the defenders, because they need to be able to keep their expertise on those cases. So, it is kind of a delicate balance to keep the CJA panel attorney numbers as high as possible.

But I think, generally speaking, the proportion of cases handled by the defenders compared to CJA panel lawyers has been on the increase over the last couple of years.

DAILY JUROR COMPENSATION

Mr. QUIGLEY. We got an increase in juror pay for 2018 and glad to be a part of that. I appreciate my colleagues support on that. Just how much has that mattered? I mean, are we able to analyze what the impact is in the system for just how much jurors are getting paid?

Judge LUNGSTRUM. I think it is too soon to tell whether, in fact, that is going to make an actual difference in terms of the rate of jurors who attend rather than try to figure out some way not to attend. But I cannot tell you how appreciative we are of that increase. \$10 does not sound like a lot of money, but it has been sitting at this level since 1990 while, if it had been adjusted for inflation, they would be making closer to \$75 a day.

And so, even though \$10 does not get to even a realistic number compared to what inflation would be, I think, if nothing else, it shows a commitment by all of us, both the judiciary and the Congress, to treating citizens well who are spending their time making very difficult decisions, only because their name came up by a random draw. And in many places, it may be only 40 percent of businesses actually help out with jurors when they lose pay by virtue of serving.

So, how it is going to translate into better numbers of people showing up? It is too early to tell. But I am convinced that it is going to make people feel better. We are trying, and I think it is going to make them feel like the experience is a better one for it.

Mr. QUIGLEY. Can you explain, just so we have a public understanding of this, how that relates to the grand jury situation and how long they sometimes sit?

Judge LUNGSTRUM. Honestly, the grand jury situation is a whole other matter. I mean, as you know as a person that practiced law, you can have a jury trial that lasts a day or two. You can have a jury trial that lasts months. So, you can have that in a jury situation. Almost all grand juries sit for as much as 18 months. And they may come in every month or 6 weeks and take 2 or 3 days of their time. So, how those people are able to function with that—

Mr. QUIGLEY. Do they get paid the same amount?

Judge LUNGSTRUM. They do. I wish there were another approach to that. I have presided over grand juries as a district judge a number of times. I have been a district judge since 1991. So, I have presided over a number of grand juries. And when you select that grand jury, those folks come in and you say, "Congratulations. You are going to get to be with us for the next year and a half." And you will see a lot of people looking like they have just gotten some bad news handed to them.

[Judge Lungstrum submitted the following for the record:]

Effective May 7, 2018, Federal jurors will be paid a fee of \$50 for each day of actual attendance at a trial or hearing. This amount is set in statute (28 U.S.C. 1871) and, as noted by Judge Lungstrom, applies to both petit and grand jurors. The statute also provides that petit jurors serving more than 10 days on a single case or grand jurors serving more than 45 days of actual service may be paid an additional \$10 per day, at the discretion of the presiding judge. For this reason, you may find some grand jurors sitting for multiple months and receiving higher compensation than other grand or petit jurors who are participating in shorter proceedings.

What is interesting—and this is, I think important not to forget—both with trial juries and grand juries, almost always, when you talk to them after they finish their service, they have felt that it was really worthwhile. Once they get past that initial shock, that they are having to do this, having done it, they almost always say, "Wow, this is something I am glad I had the chance to do, to participate as part of our system."

I always explain to the jurors in the voir dire process that, in addition to voting, this is one of the times in which you are actually exercising that citizen's right and power to be part of your governmental structure.

And by the time it is all over, they are feeling pretty good about it. So, I am somewhat reassured that, generally speaking, the process is well received. That does not mean it is not a hardship or an inconvenience. And I think that is an issue.

Mr. GRAVES. Mr. Cartwright, you are recognized.

WORKPLACE CONDUCT

Mr. CARTWRIGHT. Thank you, Mr. Chairman. Judge Lungstrum, thank you for being here. And Director Duff, you too. Director Duff, as head of the Federal Judiciary Workplace Conduct Working Group—

Mr. DUFF. Yes, sir?

Mr. CARTWRIGHT. I do not want to try to pronounce the acronym for that. I trust you can shed some light on some of the specific initiatives that you have taken to improve reporting procedures for misconduct in the workplace.

Mr. DUFF. Yes, sir.

Mr. CARTWRIGHT. There is an awful lot of talk about that lately, and probably rightly so.

Mr. DUFF. Yes.

Mr. CARTWRIGHT. In your letter to Senators Grassley and Feinstein, you say that, "the working group is removing barriers to filing complaints."

Mr. DUFF. Yes, sir.

Mr. CARTWRIGHT. And so, what I am interested in is if you can shed some further light on specifically what barriers have been removed and can you describe how filing a complaint now differs

from how filing a complaint was before the working group's current initiative?

Mr. DUFF. Thank you for the question, and I am pleased to report on the progress of the working group. As you know, I was directed by the Chief Justice in his year-end report to put together the working group. His year-end report was issued on January 1st. We assembled the working group by January 12th. We have met as a group. We have eight members—I would say seven distinguished members and myself—so totaling eight.

But we have met three times in person and been in daily contact since January 12 with regard to our efforts to analyze and improve processes and procedures within our branch of government on workplace conduct, complaints, and issues. And we have been able to determine where some immediate improvements can be made.

We had an initial challenge of some misunderstanding with regard to our confidentiality provisions in our ethics rules that were implemented, frankly, in the aftermath of social media to preserve confidences within the branch, understandably.

But those had been misinterpreted by some employees and law clerks as to prohibiting disclosure of workplace misconduct. That was never intended. And so, we have made revisions already to the confidentiality provisions in our ethics guidelines for our employees and law clerks.

But there are a number of other areas where we have already discovered potential improvements, and we have opened up our process of review to employees and law clerks for their participation. We have had a lot of feedback directly to our working group and within the circuits around the country from employees and law clerks as to what those barriers to filing complaints might be. This is still an ongoing process; we have not finished our work and probably will not. It will be an ongoing project because we will want to review the progress that we have made.

But what we have determined, clearly, is that one of the barriers to filing is the formality of our complaint process. There are really two mechanisms to file a complaint right now. One is under the Conduct and Disability Act, which is a statutory provision with very detailed requirements to file a formal complaint. And the second formalistic complaint process is through the employment dispute resolution process. There again, it requires a formal complaint. And what we have been hearing, and what is supported by all the studies that we have examined up to this point, is that employees need and want a less formalistic process. The formal complaint process works to the extent it is utilized.

But many employees just want guidance, counseling, and, we think, intervention earlier on in the process so that you do not need to get to the formal complaint process.

And so, we are going to create other outlets for employees within the branch, both at a national level and throughout the circuits. And we have relied on an EEOC study which, I think, demonstrates what we have also learned in our process of listening to employees and law clerks as to their concerns.

And the EEOC study, which was an 18-month study of workplace conduct in all walks of life—both public and private, determined that 75 percent of people who have experienced harassment in the

workplace never file a report, never report it to their superiors never pursue process.

And that figure is stunning. And so, we took the approach of how do you identify those barriers? How do you remove them? How do you ensure that our employees have a safe work environment and one in which they feel free to complain without retaliation?

Mr. CARTWRIGHT. That is where I was going to go. And if the chairman will indulge me one more question? I think about the close-knit confines of judicial chambers.

Mr. DUFF. Yes, sir.

Mr. CARTWRIGHT. You have a brand-spanking new lawyer out of law school: bright-eyed, bushy-tailed, and regards the Federal judge that he or she works for as a part of the pantheon of demi-gods and——

Judge LUNGSTRUM. They are soon disabused of that.

Mr. CARTWRIGHT. But it is such a small, close-knit operation that what I wonder is the working group doing something to enlarge the protections that an employee has who files a complaint, either formal or informal?

Mr. DUFF. Yes. And again, I think providing more options to the employees and to the law clerks——

Mr. CARTWRIGHT. I mean protections against retaliation, as you mentioned.

Mr. DUFF. Yes. And, actually, those protections exist. Within the model employment dispute resolution plan, there is a specific provision that prohibits retaliation against those who complain.

Judge LUNGSTRUM. If I could just interject for a second. I have been a chief judge and I have been a district judge for a long time. And I think one of the points that Jim is trying to make is that there is a misunderstanding about confidentiality compared to trying to have grievances addressed. Because obviously you do not want your law clerk going out to their friends and saying, "Wow, I am working on this case and it could well invalidate a patent"—obviously, whatever it might happen to be. That has to be strictly confidential. That is what the confidentiality thing is all about.

I do not expect my law clerks to not talk. If they want to go out and say I am not a very good judge, that is up to them. If they want to go out and say they do not like the fact I am bald, then that is fine. We are not hung up on those things.

At the most pertinent stage of things, I think we recognize there are bad apples in any barrel. But I think, by and large, we all recognize we are held to very high standards for the reasons that you have stated, and that we should be held accountable if we violate those standards.

So, I think once some of this informational situation is taken care of so that people understand where things are, I believe that will help. Because I think a lot of it is tied up in what I have just described.

Mr. DUFF. And I think it is education, too, within our branch and with our employees. Many of them were unaware of these outlets that already exist.

Mr. CARTWRIGHT. And protections.

Mr. DUFF. And protections. In particular, the protections against retaliation. They were simply unaware of them. So, we have to elevate and raise the level of training.

And one of the things we are going to do in the orientation process for new employees and new law clerks is have a separate session on this topic. It will not be on the same day you are getting all your orientation about your insurance coverage, where you are inundated with paperwork and it is just added on to that. We are going to have a separate day of orientation that educates our employees and law clerks as to——

Mr. CARTWRIGHT. Is that new?

Mr. DUFF. Yes, sir. Yes.

Mr. CARTWRIGHT. Thank you. I yield back, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Cartwright. The gentleman from Iowa, Mr. Young, is recognized.

THE JUDICIARY'S RELATIONSHIP WITH GSA

Mr. YOUNG. Thank you, Mr. Chairman. James, how are you doing? It has been a while. Still a big Wildcat fan?

Mr. DUFF. Oh. Yes, sir.

Mr. YOUNG. Yeah.

Mr. DUFF. We have Georgia football. We have Loyola basketball. We have got it all covered up here today.

Mr. YOUNG. Nice to see Kansas represent the South.

Mr. DUFF. Do not leave.

Mr. YOUNG. Well, I see GSA did not make a request for a courthouse this year. What is your relationship like with GSA and do you feel that we are addressing the judiciary's needs for courthouses adequately? Just tell me about your relationship with GSA on that.

Mr. DUFF. Thank you for the question. Our relationship with GSA is improving. They have challenges. And we have challenges with them, certainly in certain pockets of the branch and in certain courts.

But we have been working with them very closely on a validation initiative that has recalculated how they determine what our rents will be. We have to pay rent to GSA for our courthouses. And we have seen great improvement there and a willingness on the part of GSA to work with us on that. So, I would say that the relationship is improving greatly.

Mr. YOUNG. Yeah, we were just—the Third District, Des Moines, is going to get a new courthouse here soon and GSA has been working on that. I just wondered what your involvement was on that? Do you have certain specification, the metrics that have to be met for the land and the site, and that kind of thing?

Mr. DUFF. We do. And we understand that for the courthouse in Des Moines, there is progress that is being made with GSA and with the city of Des Moines. I know the location of it was an issue.

Mr. YOUNG. An issue that has been corrected simply through making sure that there is participation by the folks in the Third District. Transparency. A chance to weigh in and just have their voices heard. So, thank you for that help.

Mr. DUFF. Yes, sir.

COURT SECURITY OFFICER STAFFING

Mr. YOUNG. I know you are all in your third year of the phased implementation of the new court security officer staffing standards. My understanding. And I see you have requested 35 new CSOs when last year the number was flatlined.

And I wonder, here with this new request, is this sufficient? Are you simply acting within your budget constraints? Or are you really pushing for the number that you need? Tell me a little bit about that number.

Judge LUNGSTRUM. Thank you. That is an excellent question. When the Marshals Service came to us a few years ago and said that they felt that we needed to increase the number of CSOs by almost 350, both the Marshals Service and the judiciary recognized that that was something that would have to be phased in over time. That was not only from a budgetary standpoint, but also simply from the standpoint of the ability to bring people onboard. It is not that easy to hire a CSO, as it all turns out.

Well, that is kind of what caught up with this zero-out of the past round. That was simply catching up with what the Marshals Service was able to do to get us to the number of CSOs that they could bring onboard.

Now we believe we are in a position to bring an additional amount onboard each year incrementally for the next several years to bring us up to 100 percent. We have met about 50 percent of that goal now, with this request, and over a few more years then we will work our way up to 100 percent.

I think that is reasonable. The need for those CSOs, I think, is for forward watch positions to be concerned about active shooters or terrorism; for positions in the control rooms, particularly in the large courthouses, to monitor cameras; and especially positions at the screening lanes. Notice, that could be the Rayburn Building today, which had a huge long line.

Well, we have that same situation with courthouses, only a lot of those folks coming in maybe are not just here to talk to their representatives about what they would like to have going on in their district, but some of them are coming in with maybe a different mindset. So, it is important to have an adequate physical presence in the screening lane. And we have had some problems in the past with inadequate staffing of the screening lanes.

But I think the Marshals Service is confident that if we continue on pace with this request and keep this request up over the next several years—and probably increasing a little bit incrementally—we will be fine.

Thank you for that interest, though, because it is very important. Of course, that security is for the public that is there on their business, as well as the courthouse staff. It is a very important public issue that we are concerned about.

Mr. YOUNG. Well, unfortunately, we have to worry more and more about security in this world. And I wish we did not have to do so, but we have to take precautions. Thank you.

Judge LUNGSTRUM. Yes.

Mr. YOUNG. Mr. Chairman.

Mr. GRAVES. Thank you. And Judge, I wanted to inform you that your representative, Mr. Yoden is doing his duties. He is actually chairing another subcommittee—his own subcommittee—at this moment and was unable to be here.

Judge LUNGSTRUM. Well, would you please tell him I missed seeing him today, and, “Rock Chalk.” Would you pass that on to him?

Mr. GRAVES. I will—I wanted to make sure you knew he was working hard on behalf of his constituents.

Judge LUNGSTRUM. I will report to the people of Kansas that Mr. Yoder is doing his job.

CHANGING ENFORCEMENT PRIORITIES AT THE DEPARTMENT OF JUSTICE

Mr. GRAVES. One final thought from me, and maybe you each could address. I know the administration has taken a new interest in immigration and enforcement policies. How is that impacting the judiciary, and your budgeting, and your forecasting? How do you account for that? Is it just more court time? Maybe just give us a feel for that, what you are experiencing.

Judge LUNGSTRUM. Thank you. That is a very good question. As of yet, the impact has not really hit. And that is largely a function of how long it has taken to get new U.S. Attorneys in place.

It is amazing how much difference that makes. If you have a district that does not have a confirmed U.S. Attorney, they are kind of out there just doing whatever they have been doing. When they get a new U.S. Attorney in there, that individual tends to set an agenda and maybe follow an agenda that is maybe being driven from higher up.

So, we have not seen yet as much of a dramatic increase as I think we expected to see or are probably going to see. And it is not our practice to budget for something that we think is going to happen. We do not want to come to you and say, “Hey, pie in the sky. Give us some money.”

But if, in fact, enforcement is more aggressive, as the administration has indicated it would be, that will affect us at all levels. It will run up a need for defenders or for CJA panel counsel. It will run up probation office workload. And of course, as it is, our five border courts have 75 percent of the felony immigration cases and 25 percent of the felony drug cases across the country. And this is just in five courts on the border.

But those immigration cases, they affect Chicago. They affect Kansas City. I am sure they affect Dalton, Georgia. They affect people all over the country because folks do not just stop when they get across the border. They come to various places. And so, therefore, it can have an impact on the workload of judges throughout the United States. But we have not seen the impact yet. We just anticipate it.

Mr. GRAVES. So, you are prepared and have the ability to monitor the pipeline.

Judge LUNGSTRUM. Absolutely. And it is something we are really keeping track of. And if it comes to pass in the next year, that would be factored in probably to requests that we make.

Mr. GRAVES. Great. Thank you for your explanation. Mr. Quigley, you are recognized.

PANEL ATTORNEY COMPENSATION

Mr. QUIGLEY. Sure. Well, to finish the thought on how different pay matters. We talked about Federal Defenders and jurors. But the panel attorney, we got a bump again, six above COLA increase in the hourly payrate. Are you able to gut, Judge, just how much that pay impacts willingness to participate and quality of attorneys? Have you been able to do that over recent years?

Judge LUNGSTRUM. I can do that sort of backwards because I cannot tell yet what this actual increase is going to do, other than anecdotally in talking to my friends who are CJA panel lawyers or people who appear in my court who are CJA panel lawyers, who are very grateful. And of course, I tell them it is Congress. We have been asking but it is Congress who delivered for them. So, they are very appreciative.

But what we do know is that the survey that was done as recently as 2015 showed that over a third of judges had encountered difficulty getting lawyers to serve on CJA panel appointments. And over half the time that is because of pay issues. That same survey reflected that numerous lawyers on the CJA panel were indicating they just simply could not afford to do it because their regular average hourly rate is really about twice of what the panel rate is now. Even with the increase to \$140 an hour they have average overhead that is maybe more than half of that \$140 an hour.

And really, the struggle is this. I know it is great that we got that \$6 increase. I cannot thank you enough. I would like to get that next \$6 increase because we need to keep these really well-experienced CJA panel lawyers. Being a Federal defense lawyer is not just being a good advocate. It is not just being Perry Mason, coming into the courtroom, and showing that somebody else did it.

It is being an expert on the intricacies of the sentencing laws and various other Federal statutes that are so complicated. When I first became a judge, I had been mainly a civil practitioner, and I was shocked to see the guideline manual. It was like the IRS code. You cannot just be a good lawyer and be handed a Federal criminal case and be expected to defend it competently.

So, you need to be experienced and you need to understand what is going on. So, we have implemented programs to try to bring new lawyers in and train them—with the Second Chair program, for example, that we are very active with in our district to be able to build up that experienced bench, so to speak. So, I think it is very important that we continue to fund the CJA panel rate at as close as possible within your budgetary constraints to what the law allows because I think that benefits everybody. It benefits the public because it is in the interest of justice to make sure people have a vigorous defense.

But a lot of times a vigorous defense involves knowing when not to have a trial. Or knowing when to resolve something in a way that saves time and money for everybody down the line. So, in some ways, having really good counsel works to everybody's benefit, not just the individual who is being represented. So, I do not mean to get up on my high horse here, but I think it is a really important point.

Mr. QUIGLEY. Yes, for me and those who I knew who did a lot of this is it was some sense of responsibility to help. But none of them are going to make a living.

Judge LUNGSTRUM. Well, certainly in Chicago they are not, and not even in Kansas City, probably.

Mr. QUIGLEY. If they had time——

Judge LUNGSTRUM. Right.

Mr. QUIGLEY [continuing]. All the overhead is there with their office and staff. Sort of the logic is the marginal costs are not as great as in others. And frankly, especially during hard times, there are fewer and fewer people who can just pay outright.

Judge LUNGSTRUM. Right, and there is a pro bono component to it, in a sense. As you say, a lot of lawyers do it because they think it is a good thing to do. But it is not fair either to expect people to come in and devote the quantity of time that it takes. You might be appointed to a criminal conspiracy trial that takes weeks. Well, okay.

That means you are not out doing something else. You are sitting there in Judge Lungstrum's court. I have had 10 or 12 defendant trials where the Federal public defender maybe has one of those defendants and the other ones are all CJA panel lawyers. Well, they are sitting in front of me for weeks at a time and that is really all they are able to do.

Mr. QUIGLEY. Final point, I think it impacts the rest of their practice.

Judge LUNGSTRUM. Yes, it does.

Mr. QUIGLEY. They are not out getting other people.

Judge LUNGSTRUM. It does.

Mr. QUIGLEY. Thank you.

Mr. GRAVES. Thank you, Mr. Quigley. I have no further questions, and I do not think Mr. Quigley does either. I do want to thank both of you. Thank you for joining us today for your first hearing before us. Fantastic job.

I want to thank you for your preparation and your thoughtful responses, as well for presenting the budget on behalf of the judiciary and how that impacts each of our districts in its own unique way. Good to see you. Good to be with you today. Thanks for your work. And with that, this hearing is adjourned.

Financial Services and General Government Subcommittee
Hearing on the Judiciary
for the Honorable John W. Lungstrum and Director James C. Duff

Questions for the Record Submitted by Congressman Graves

Judiciary Courthouse Capital Security Program

The Capital Security Program (CSP), which is funded within GSA's Federal Buildings Fund, provides funding to address serious security deficiencies in existing courthouse buildings where physical renovations are viable in lieu of constructing a new courthouse. This program is typically funded at around \$25 million annually and supports capital security construction activities at two or three courthouses in a fiscal year.

Question: What is the process for selecting projects under the Capital Security Program? How are they reviewed and prioritized?

Answer: A preliminary list of potential CSP projects is developed jointly by the Judiciary (in part based on the Asset Management Planning (AMP) process, specifically facility benefit assessment (FBA) data), the General Services Administration (GSA) and the U.S. Marshals Service (USMS). To make the preliminary list, a facility must have a low AMP process FBA security score, be federally owned, house at least one judge, and contain at least one courtroom. In addition, a facility cannot make the preliminary CSP list if it is on the current *Courthouse Project Priorities* list (indicating a priority for new construction due to space needs) or on a GSA disposal list as an underperforming asset.

After the preliminary list is compiled, it is then narrowed down through in-depth analysis conducted jointly by the Judiciary, GSA, the Federal Protective Service (FPS), and the USMS. This analysis helps identify the facilities with the highest needs by examining factors such as the volume of detainees regularly in the facility; whether it has been designated high risk by the USMS and/or the FPS; and whether there is a probation/pretrial services office on site. The in-depth analysis also assesses the practicality of a CSP project at a given facility by examining whether potential solutions are available that would address the facility's most significant security risks and whether other upcoming construction work (e.g., a GSA renovation and alterations project or a USMS security project) is planned at the facility during the same time in which a CSP project would be executed.

Using the results of the in-depth analysis, and upon concurrence by the respective court and circuit, the Judicial Conference Committee on Space and Facilities, in consultation with the Committee on Judicial Security, approves locations to undergo a "CSP study" to develop specific project scopes and cost estimates. Upon completion and review of these studies, the Committee on Space and Facilities then selects and prioritizes the projects that the Judiciary will request that GSA fund from the CSP appropriation.

Question: How frequently are projects reviewed to be included for consideration under the program?

Answer: The Judicial Conference Committees on Space and Facilities and Judicial Security review and approve projects for CSP studies or for CSP project funding on an annual basis.

Question: Is there a greater need for funding for this program? Does the Judiciary have a backlog of these kinds of projects?

Answer: The Judiciary has generally studied and approved projects at a pace that is consistent with the amount of funding that has been typically appropriated for the CSP each year (\$20-25 million). Currently, we have two projects that have been approved for potential funding and are awaiting a fiscal year (FY) 2019 appropriation; one project undergoing a CSP study; and two more locations that will be considered for CSP studies in June 2018. However, we have dozens of additional courthouses on the CSP preliminary list that could undergo CSP studies and ultimately be approved for funds. With additional funds available and enough lead time to plan, demand is certainly sufficient to execute more CSP projects each year.

Question: For fiscal year 2019, the budget proposes \$25.4 million for two projects: the Theodore Levin U.S. Courthouse in Detroit, Michigan and the U.S. Courthouse in Augusta, Georgia. Am I correct in my understanding that these two projects were evaluated by the Judiciary, the GSA, the Federal Protective Service, and the U.S. Marshals and are the top priorities for the Capital Security Program in FY19?

Answer: Yes, the projects at the Levin U.S. Courthouse in Detroit, Michigan, and the U.S. Courthouse in Augusta, Georgia, have completed and approved CSP studies that were developed and reviewed by the Judiciary, GSA, FPS, and the USMS as part of the standard process for approving CSP project locations. These two courthouses represent the two highest priority projects for the CSP in FY 2019.

Question: Will the funding requested in this year's budget satisfy the requirements for these two projects or do you expect there will be additional costs in future years?

Answer: Cost estimates for construction projects can fluctuate as a result of changes in a project's design or schedule, and the cost estimates used to construct our FY 2019 budget request for CSP are subject to change as the projects move through the design and construction process. At this time, however, \$25.4 million is the best estimate of the cost of completing these two projects.

WEDNESDAY, APRIL 18, 2018.

OFFICE OF MANAGEMENT AND BUDGET

WITNESS

HON. MICK MULVANEY, DIRECTOR

Mr. GRAVES. Good morning. We will call this subcommittee to order. I would like to welcome today's witness, my good friend from South Carolina, OMB Director Mick Mulvaney. The OMB Director is always a headline hearing, but this is truly a first for us. We also have the Consumer Financial Protection Bureau Director with us, testifying before the Appropriations Committee.

So, Director Mulvaney, is this the first Appropriations Committee meeting you have attended as the Director of the CFPB?

Mr. MULVANEY. Yes, sir.

Mr. GRAVES. We are delighted to have you. Thank you—in any capacity, we are always glad to hear from you. We appreciate your service, particularly your dual-hat capacity in which you serve the administration and our country.

Before we get to the details of your budget request, I would like to point out how far we have come since the last time you testified before this subcommittee. 2017 was a great year of accomplishments, and I know you played a big role in moving the administration's pro-growth vision forward. The results are making a real difference for American families, for my constituents, and for our constituents across the board here.

For example, unemployment is at a 17-year low; 2.5 million new jobs have been created since President Trump took office and you took over in your new role. Wages are growing at nearly 3 percent. That is the fastest growth in almost a decade. Small business optimism is at a historic high level. We all know this didn't happen by accident. This happened because Congress, the administration, yourself, we all worked together to reform the Tax Code for the first time in more than three decades. It has happened because we slashed nearly 1,500 unnecessary rules and regulations. It has happened because we freed businesses, big and small, to grow, and to thrive.

Director Mulvaney, let me just say thank you. Thanks for the important role you have played in all of this over the last several months.

Now, on to today's hearing. In addition to your budget request, there are a few areas I would like to discuss in a little bit more detail, and I know Ranking Member Quigley would as well.

We have all seen the reports of the rescissions package from the White House. Overall, I think this is a good tool. It is a good idea. I am interested to hear your thoughts as we move forward. But I would like to encourage you, as we have discussed, to reach out to

members of the authorizing committees, reach out to members of the Appropriations Committee and committees of jurisdiction about the areas under consideration. I think you will find great cooperation there.

I think it is safe to say some Members of Congress have many great ideas about where we can continue to save taxpayer dollars, and we would all like to hear more about how you plan to use this tool and your congressional outreach plan as well.

Finally, I am curious to hear about your work as the Acting Director of CFPB. Prior to your tenure, this agency earned a reputation as an unaccountable, unconstitutional Washington bureaucracy. I am interested to hear a little bit more about your efforts to rein that in and to reform this agency.

So we look forward to hearing from you this morning. Before we hear your testimony, I would like to recognize Ranking Member Quigley for any remarks he may have.

Mr. QUIGLEY. Thanks, Mr. Chairman. Thanks for holding this hearing.

Director Mulvaney, welcome back. This is your second appearance before this subcommittee in your capacity as OMB Director. Thanks again for making time to be here.

Obviously, we are primarily here to discuss OMB's request for its own budget needs in fiscal 2019, but one of the OMB's core responsibilities is the production of the President's budget government-wide. I understand that cheers some and disappoints others, but it is clear that the President's budget would create an annual deficit of \$984 billion in its first year. This trend continues in subsequent years, adding up to a grand total of \$7 trillion over 10 years.

To make matters worse, the President's budget fails to honor the recently passed Bipartisan Budget Act by funding agencies at \$57 billion below the new nondefense discretionary cap.

It is easy to write off the importance of a category within a title of nondefense discretionary, but just so we are all clear on this: This category of funding, where your budget cuts more than \$57 billion below the cap is where one finds resources for activities including veterans' programs, law enforcement, diplomatic operations, education, research, and in fact; this is precisely where the government is poised to invest in the very efforts that boost jobs and improve economic security. And yet your budget seeks \$103 million for OMB, a 2-percent increase above 2018, this after your agency received a 6-percent increase, by far the largest growth in salaries and expenses across all the agencies in the entire financial services bill.

By comparison, the salaries and expenses account was cut by 10 percent for the Department of Treasury, 18 percent for the Federal Communications Commission, 2 percent at the Federal Trade Commission, 13 percent at GSA, and the list goes on.

In your testimony, you suggest that your request reflects belt-tightening since, compared to 527 FTEs at OMB in 2010, your request of 493 is a significant reduction. But that is not actually a fair representation.

While President Obama was in office and you were serving in the House, the FTE numbers at OMB dropped to an all-time low of 457, thanks to the refusal of congressional Republicans to provide

adequate funding. In fact, you yourself voted for bills that would have cut it even below that level. Yet, as of 2018, you expect to be back up to 487, fully 30 FTEs above the level in 2013 and 2014. And now you are asking for six more FTE. Meanwhile, your budget request for other agencies under the jurisdiction of this subcommittee includes cut after cut to agency administrative budgets and staffing levels. And that is just the FSGG subcommittee.

Director, while you leave \$57 billion on the table, which, by the way, was passed through Congress on a bipartisan basis and signed into law by the President, these are just some of the significant activities and functions that are eliminated in your budget request: the Legal Services Corporation, the National Endowment for the Arts, the National Endowment for the Humanities, the Corporation for Public Broadcasting, the Global Climate Change Initiative, the Manufacturing Extension Partnerships, the Rural Business and Cooperative Services, and the Economic Development Commission.

We look forward to discussing these and other issues with you today.

Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley.

Director Mulvaney, you are recognized to present your testimony, and then we look forward to asking you a few questions.

Mr. MULVANEY. Mr. Chairman, thank you very much, as always, for having me.

Ranking Member Quigley.

It is good to see all my former colleagues again.

By the way, to your opening point about have I ever been here before as the chairman or the Director of the Bureau of Consumer Financial Protection—which, by the way, is the formal name of the CFPB. The CFPB technically doesn't exist. We have tried to start using BCFP instead of CFPB. It is very difficult to do, but the actual name of the agency, the Bureau, is the Bureau of Consumer Financial Protection. And no, a Director has never been before any Appropriation Committee before because the Bureau does not receive appropriations. So I look forward to maybe talking about that some today.

Real briefly. I am not going to read my opening statement. You all have seen it. I know we get a chance to talk about it at your pleasure. I will point out that we are asking for a small increase from 101 to 103, so just under 2 percent, much of which is going to be directed to the Office of Information and Regulatory Affairs. We can talk about that. We can talk about the ITOR budget.

I do want to raise two specific issues which I do address in my opening statements, which I want to draw to your attention. Number one is to thank you for what we call the TMF, the technology modernization fund. You all put a bunch of money in there. We really appreciate that. This is I think a very innovative program where we have a group of folks from all over the executive branch who get together and essentially we have a competitive process where we will pick programs that we think might actually work, and we will spend money on those to try and update our IT.

I encourage you folks to continue your oversight of that. We would be happy to share information with you. We think it is one

of the most innovative programs that we have come up with together, the administration and the Congress. We look forward to keeping you all abreast of the progress there.

The other is to draw your attention to something that is not functioning as well, which is the Federal Building Fund. This is the money we use for buildings. It is one of the rare things where the name is actually what it is. About \$7.2 billion has been diverted from that in the last several years, and we fear that, if that trend continues—and it did continue in the omni—that it will start to materially impact our ability to maintain the physical infrastructure of the government. But that is all in the opening statement.

The fun part about these hearings for me is that I am liable to be asked everything, literally everything. You mentioned our fiscal year 2019 budget. Mr. Quigley talked about the proposed fiscal year 2018 budget we sent to Congress, and in fact, I think we sent two different versions of it because of the various pivots and so forth.

My guess is I will get questions on rescissions, SNAP, something called SNPLMA when Mr. Amodei walks in, the Southern Nevada Public Land Management Act, and, obviously, the Bureau. So all I can tell you is I enjoy it. It is a fascinating intellectual pursuit for me to sit here and see what the questions are going to be.

All I can tell you in advance is there is no way to prep the entire Federal Government. So it may be that some of my answers are “I don’t know; can I get back to you?” And I look forward to working with you folks on getting all your questions answered as best as we possibly can.

With that, I thank you, Mr. Chairman.

Mr. GRAVES. Thank you. I have not known you to answer “I don’t know” before. So, if we reach that level, we have dug pretty deep today.

Mr. MULVANEY. I am up-to-date on SNPLMA, I think, when Amodei gets here.

Mr. GRAVES. Well, I will start with the rescissions. That seems to be something in the news of late after the recent budget and passage of the spending bill that was signed into law by the President. And I think this committee knows that the House, the Senate, and the White House were working together to come up with the recent budget agreement.

As you have discussed previously, there is a rescission package being presented by the administration. Can you just give us an update on that? And, prior to that, let me just say for our committee’s sake that I think we all recognize this is a useful tool. It has been used by administrations going back many, many years, but it is not something that we have used recently. So it is new, in that respect, and there may be a little bit of education here. But I think it is a useful tool, especially in conjunction with consultation with the authorizing committees and appropriators, so I appreciate you bringing forward this tool for more efficiency.

Mr. MULVANEY. Thank you. It is new, but it is certainly not unique. It is new to many of us, myself included, because if you have only been here since 2010, you have never done one of these things before. Actually, that is not true. If you only have been here before 2000, you have never done one before.

It is part of the 1974 Budget and Impoundment Act. Every President that was able to use it—Ford, Carter, Reagan, Bush, and Clinton—used them. So Presidents from both parties with control of Congress in both parties used rescissions in the past. For various reasons, it was not used during the George W. Bush administration nor was it used during the Obama administration. But there have been I think several thousand rescissions sent to the Congress by the White House over the course—since the 1974 act was passed into law.

So, while it is new, since it hasn't been done since 2000, it is not at all unusual. In fact, there are a lot of folks out there now who are saying that they would never countenance voting for one who have actually voted for them in the past, which I find interesting.

The system works very simply, which is that we find things either in the omnibus or that are not in the omnibus that we just don't think you should spend the money on. That is important, by the way. It is not just the matters that were addressed in the last spending bill. There is money that has been previously appropriated that hasn't been spent yet. These are carryover funds, they are zero-year funds, they are multiyear funds that we might look at and together say: You know what? Even though we thought 4 years ago that was a good program to spend some money on, either we don't need to spend any more on it or our priorities have changed. And rescissions give you the ability to do that.

So we look forward to working with both the House and the Senate to send those down. If we do, the process is fascinating. If we send you a rescission package, then the spending on whatever we propose is automatically stopped for 45 days. Then there are various ways for votes to be taken in the House and the Senate that bypass the ordinary rules. One-fifth of your body can require a vote in the House. One-fifth of the body can require a vote in the Senate. And it is a majority vote in both bodies. So it is one of those rare things, again, under the Budget Act of 1974, as we deal with reconciliation, for example, that only requires a simple majority in the Senate.

So it is a fascinating tool, a tool that has been used by both parties over the course of the decades, and we look forward to working with you, Mr. Chairman, and whoever is interested in maybe bringing some sanity to the spending to see what we can do together.

Mr. GRAVES. Can you give us any sense of timing? Is it one package, or is it something that can be done throughout the year? Is it tethered to the passage of a spending bill?

Mr. MULVANEY. No, it is not tethered to the passage of a spending bill. The only limitation seems to be that we cannot send you the same rescissions twice. We could, I guess, in theory, send you a thousand separate rescissions, which we are not going to do, but we can send some now, some a month from now, some later on in the fall. Again, that just depends on our discussions with you folks and our own internal discussions as we sit there and try to figure out what would be the appropriate things to send down for you folks to consider to rescind on spending.

Mr. GRAVES. And timing?

Mr. MULVANEY. Hope to have something here in the next couple of weeks. I know that we don't have any big House breaks again

until the Fourth of July. So it is a chance to do a good bit of work, with the House at least, between now and summertime.

Mr. GRAVES. Great. Thank you.

Mr. Quigley.

Mr. QUIGLEY. Thank you, again, Mr. Chairman.

The appropriation bills passed in 2017 and this year, they stated that prior approval from the Appropriations Committee must be secured before an agency can reprogram funds for a variety of purposes, including creating or reorganizing offices, programs, and activities.

It has come to our attention that at least one agency under this subcommittee's jurisdiction initiated a reorganization plan that involved the closing of two regional offices without notification to the subcommittee and the committee, let alone securing approval.

The agency contended that they had been authorized to proceed on account of OMB's approval, but that is not, in my mind, what the law stipulates. What is your view on the responsibility of agencies to follow the law? We are talking about Federal Labor Relations.

Mr. MULVANEY. Okay. That was my question, is which—because that one didn't immediately come to my attention.

The answer is we follow the law. That is what we do, right. I am not familiar with the specific limitation. We are working on a governmentwide reorganization, which we have been very public on. And I guess, to the extent we have been spending time on it, we have been spending money on it. I am not sure about the specific closure of the two—is it the Federal Labor Relations board offices you are talking about?

Mr. QUIGLEY. Federal Labor Relations Authority.

Mr. MULVANEY. Mr. Quigley, I am sorry. Not only am I not familiar with it, I have never heard of that. So I will have to find out what that is all about.

Mr. QUIGLEY. They are moving forward with consolidation, is the understanding. It is within the appropriations bills that there at least must be notification—we believe approval—because this is an alteration.

Mr. MULVANEY. I guess my question, Mr. Quigley, and I don't know the answer off the top of my head, is closing an office that the agency considers to be surplus, is that technically a reorganization?

Mr. QUIGLEY. Sure.

Mr. MULVANEY. I don't know the answer—

Mr. QUIGLEY [continuing]. If you are moving, I think the definition of reorganizing, because you are moving people around. Let's have this discussion.

Mr. MULVANEY. I would be happy to.

Mr. QUIGLEY. If you could get back to us with how you believe this constitutes—how this doesn't seem to apply to the appropriation bills passed, again, in 2017 and this year. But they do state that prior approval from the Appropriations Committee must be secured before an agency can reprogram funds for a variety of purposes—

Mr. MULVANEY. We didn't do that, right? We are agreeing we didn't do that.

Mr. QUIGLEY [continuing]. Including creating or reorganizing of fices, programs, or activities.

Mr. MULVANEY. Right.

Mr. QUIGLEY. It seems like it is in that—give us your best argument, if not today, then at some point, why this doesn't apply.

Mr. MULVANEY. I will be happy to. Again, off the top of my head, I can't imagine that simply closing two offices—I have no idea how many offices they have, if it is 2 of 2, or 2 of 100—how that constitutes a reorganization. Reorganization, Mr. Quigley, is something a lot more dramatic than that. We would actually move functions, for example. If I have got 100 offices and two of them are in areas that are no longer needed, I don't think closing those offices constitutes reorganization.

Mr. QUIGLEY. Well, let's have that discussion.

Mr. MULVANEY. Happy to.

Mr. QUIGLEY. Appreciate it.

In your testimony, you discussed the need for OMB to hire staff at OIRA. You are familiar with this?

Mr. MULVANEY. Yes, sir.

Mr. QUIGLEY. With tax expertise. I understand that OMB and IRS have agreed to a memorandum of understanding that OMB will in fact play a role in the development and review of certain tax regulations.

Mr. MULVANEY. Yes, sir.

Mr. QUIGLEY. I am sort of hoping you can help us understand this. Why is it OMB's view that it was necessary to change what was a past practice of Treasury having independence in the promulgation of tax law regulations? Do you understand the distinction?

Mr. MULVANEY. I don't know what the distinction is. I would be happy to explain the memorandum of understanding with Treasury and why it leads to the need for the additional personnel.

Mr. QUIGLEY. The point being the IRS already had the personnel in place with this expertise, and that is how we did it before.

Mr. MULVANEY. Fair enough. That is how you have done it for a period of time.

Mr. QUIGLEY. The possibility of duplicative actions.

Mr. MULVANEY. No. In fact, the exact opposite is the truth. This goes back to I think it is a memorandum of understanding or agreement between Treasury and OMB that dates to the 1980s, and what it did is sort of move part of Treasury out of OIRA oversight for a variety of reasons. We think, and Treasury tended to agree, because, again, we worked very closely with Treasury on addressing this situation, that the practice had grown beyond the intent of the original memorandum of understanding.

Here is the classic example I use, Mr. Quigley. One of the functions of OIRA is the cross-cutting, the cross-agency analysis that we do on regulations. If Commerce passes something or wants to do a regulation, propose a regulation, there may be a circumstance where that impacts, say, I don't know, the Department of the Interior. Commerce is not set up to sort of share its information with all the other agencies in the executive branch. OIRA in OMB performs that function for them.

Treasury is no different. Treasury may be doing something that is impacting Commerce, but Treasury is not organizationally set up to do that sort of cross-cutting type of analysis; OIRA is. And that is what we brought in. And that is one of the reasons we were able to reach that understanding with Treasury, because I think they acknowledged the value of that. Again, this is a voluntary agreement between Treasury and OMB.

Mr. QUIGLEY. Thank you.

My time is up.

Mr. GRAVES. Thank you. Mr. Stewart, and then Mr. Cartwright will be next.

Mr. STEWART. Thank you, Mr. Chairman.

Mr. Mulvaney, good to see you.

Mr. MULVANEY. Hey, Chris.

Mr. STEWART. We are proud of you and the work you are doing. You are in the fight. I know it is not easy—

Mr. MULVANEY. It is fun.

Mr. STEWART. But you are doing a great job. The chairman said he didn't think you would answer any questions with "I don't know." Can you tell me, Mr. Mulvaney, when is my birthday?

Mr. MULVANEY. I am going to blame my staff for poor prep work on that, Mr. Stewart.

Mr. STEWART. Mr. Chairman.

Mr. MULVANEY. I know Mr. Amodi's birthday because he doesn't have one. He was sort of just hatched.

Mr. GRAVES. I did say I haven't known him to answer that way. That is now new.

Mr. STEWART. Again, Mr. Director, CFPB, BCFP?

Mr. MULVANEY. BCFP, yes, sir.

Mr. STEWART. We will try to comply with your new acronym for that.

I think—and I would be surprised if you don't agree with me on this—I think it is one the top two or three worst pieces of legislation ever written. It is a good illustration of something that we have seen, and that is in the heat of the moment—don't tell me your staff—

Mr. MULVANEY. July 15. Interestingly, however, it did not put the year. So we saved you that one.

Mr. STEWART. Thank you. Obviously, it was many, many years ago.

Again, it is a piece of legislation I think that is a great example of when we legislate after a crisis, many times we overreact. I think the PATRIOT Act is a good example of that. Rather than being thoughtful, I think the CFPB and some of the other—Dodd-Frank legislation is we overreacted after a very emotional and what some people call a crisis. And it was, no question, a dramatic event. I think, in those instances, it is a good thing to go back and see if we can moderate or improve some of this legislation.

One of the problems many of us have the BCFP is that it is not accountable. It is not accountable to Congress. It is not accountable to the President. It is not accountable to any oversight. It is not accountable to the American people. The Director, like yourself, is not elected in any way.

I know that you have suggested that we can do better on that, maybe a five-person bipartisan commission. I believe you have suggested that in the past. I would certainly support that.

Share your thoughts on that, will you please, and how we can actually implement some of these changes, because if we can't do something that is achievable, then we are just thinking. What can we do to actually bring accountability to this?

Mr. MULVANEY. I will give you the short answer, because we just sent our semiannual report to the House Financial Services and the Senate Banking Committee and I encourage you folks, if you are curious about that, to take a look. We actually lay out the details on four specific proposals.

I will give you the big one: Please appropriate us. Seriously, I just don't get it. I don't get why Republicans and Democrats don't agree that maybe the Bureau should be appropriated. I just don't understand why you all would voluntarily give up that control—

Mr. STEWART. I couldn't agree with you more.

Mr. MULVANEY [continuing]. And the insight that comes with it, Mr. Stewart. And this is what is important: I testified just last week to the House and Senate and reminded them, pointed out to them—I am sure for the first time—370 people who work for me at the Bureau make more money than you do: 370 people.

My guess is you would never know that but for me telling you that. You would know that if you put us on appropriations.

What else? Half of the time of our professional economists is spent doing self-directed research on things that can have nothing to do with financial services. You all would never know that but for me telling you that. But if you put us on appropriations, even if you want to spend more, you want to spend less, that is not the point; the point is it brings that sunshine, and you get to ask questions of what goes on at the Bureau that you don't get to ask otherwise.

I am voluntarily giving it to you because I want to sort of open the doors, but if a future Director doesn't want to, he or she doesn't have to. In fact, I think I have made news by pointing out that I did not have to answer questions. I did not have to respond to questions at the Senate or the House the way the statute is written right now. The statute can be improved. There are a bunch of ways to do it. Putting us on appropriations, making us come to this committee, would be the best thing you could do.

Mr. STEWART. I appreciate that. We are glad you are here. We are glad you are sharing that information. But the next Director might not. I think that is our concern. Once again, though, would you address the five-member board? Do you think that is a step forward? Is it possible? Would you support that?

Mr. MULVANEY. I would. It was not in our four things because we focused on things that we thought would have more immediate—I think doing the five-member commission, which I absolutely support, that is not my point—I think that prevents some of the dramatic sways in the direction that the Bureau can take. All right. I am a different person than the previous Director, and he wanted to go this way, and I wanted to go this way. All right. I think if you have a five-member commission, it sort of reduces the dramatic swings that you might get from a single-person Director.

I think that is advisable. I think that the industry has the right to know what the future holds—I think consumers have the right to know what the future holds—and not be subject to this wild uncertainty based upon who is running the place. So, yes, I absolutely support that proposal.

Mr. STEWART. Thank you, Mr. Mulvaney.

I will just conclude. My time is nearly up. I imagine or try to imagine when this legislation was created, what is it that they thought was so sanctified about this board or this organization that it could not have any oversight by anyone ever?

Mr. MULVANEY. Elizabeth Warren didn't think that a Republican would ever win a Presidency.

Mr. STEWART. Yeah.

Well, thank you.

Mr. Chairman, I yield back.

Mr. GRAVES. Mr. Cartwright, and then Mr. Moolenaar.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Mulvaney, since being placed at the helm of the Consumer Financial Protection Bureau, the CFPB, I am troubled that you have essentially been working against the work you have been entrusted to do because you don't agree with the aim of the CFPB.

For example, you froze hiring. You froze new protections going into effect. You froze civil penalty payments for your first 30 days. You issued a memo to your staff stating that the CFPB will no longer, quote, "push the envelope," unquote. You have brought no new actions against financial institutions. And, as reported by Reuters, you are dragging your feet on the Equifax investigation. In an interview with the Credit Union Times in 2014, you described the CFPB as a sick, sad joke. And then you reconfirmed those sentiments to Senator Jeff Merkley during your OMB confirmation hearings.

On February 13 of this year, an article that you authored appeared in USA Today, and you stated, referencing the CFPB, quote: "If I am going to run a government agency like that, I am going to do it with humility toward those we serve," unquote.

You have changed the CFPB mission statement to focus foremost on deregulation. In January, you issued requests for information, RFIs, and specifically asked for feedback from financial institutions on how they would most like to be regulated.

Can you please clarify for us who it is you serve with humility and why it seems consumers' interests—which was the point of the CFPB—it seems consumers' interests under your tenure have taken a back seat at the Bureau, a bureau created to protect them?

Mr. MULVANEY. I serve the law. I serve the statute. That is what I do. That is what a member of the executive branch does: I execute the law.

I can go through these very quickly, if you want to. We didn't freeze the Civil Penalty Fund for 3 days. I think we did it for about 24 hours just so I could figure out where the money was going.

Mr. CARTWRIGHT. Yes, you did. You froze it for 30 days.

Mr. MULVANEY. No, sir. Actually, I think we made the payments right after I was there. I was appointed November 22. I think the first checks went out the end of November, the first week in De-

ember. And I approved them the second or third day—first or second day I was there.

The data collection freeze, I haven't talked about that. We do have a cyber problem over there. No new actions. That is a true statement. Mr. Cordray didn't make any in his first 6 months. We have pursued 25, and we have about 100 ongoing investigations.

The Reuters article is just flat out wrong, which anybody could look at—could confirm by simply looking at Equifax's 10-Qs and 10-Ks.

My conversations with Mr. Merkley are always a lot of fun.

The mission statement did not put de-reg first and foremost. We simply added it because it is in the statute. The statute says we are supposed to look for overly burdensome regulations and so forth, and that had never been in the mission statement for some reason in the previous administration. So we added that to the mission statement because it is in law. We serve the law. You all make it; we execute it. That is the way it is supposed to be.

Mr. CARTWRIGHT. How are the American people supposed to have faith in your ability to lead the CFPB when you are actively trying to transform this agency from a watchdog for the American consumers into a lapdog for the financial institutions they are supposed to regulate?

Mr. MULVANEY. I have the ability—we have 26—when I took over, we had roughly 26 lawsuits ongoing. I had the discretion, the absolute discretion, without answering to anybody, including you folks, of dismissing all 26 them. I dismissed 1 because the other 25 I thought were pretty good lawsuits. We were actually executing the law, going after bad actors, which we will continue to do, under my leadership. That is how you convince people back home that we are still taking care of consumers.

Mr. CARTWRIGHT. I want to talk about the 3-percent growth that you talk about a lot.

Mr. MULVANEY. Yes, sir.

Mr. CARTWRIGHT. You have said, you have warned Americans not to trust headlines bellowing slower growth and a stalling economy or projections saying sustained 3 percent growth is unreasonable.

As you know, the CBO, the Federal Reserve, and reputable private institutions have stated that 3 percent growth—we all want that, we would all love that—but these reputable sources have said that should only be expected for the next 1 to 2 years and that growth will settle at around 1.9 percent for the following 8 years.

Can you tell us specifically why your growth projections outstrip CBO, Federal Reserve, and reputable private economic institution projections, they are so much higher than these, and why the American people should trust you and not these reputable sources?

Mr. MULVANEY. Sure. Because we have been right so far, and the CBO has been wrong. That is why they should trust us. The CBO said that growth this year—with Obama leaving office and us coming in, the CBO said growth this year would be about 1.9 percent. We are going to be just under 3 already, by the way, which is 3 years I think sooner than we thought we would get it when we first drafted the budget. So we have been right so far.

Yes, the CBO has finally found religion and decided that the economy is going to grow faster than 1.9 percent this year, which

is why they raised their projections for this year and next year. But then, the year after, they fall back into the same mistakes they made before of assuming that 1.9 percent growth is the new normal. We absolutely reject that.

Why do we think it is sustainable? Because we have done a lot more than just lower marginal rates. I would argue too, Mr. Cartwright, that lowering rates like the Bush administration did in the early 2000s, is a short-term boost to the system. It is a sugar high. We have done a lot more than that. We have changed the fundamental structure of the American economy in how we create and tax wealth. It goes well beyond taxes and deals with things like our deregulatory policies, our energy policies, our trade policies. We think we have actually changed the fundamental structure, and that is why we think 3 percent growth is sustainable.

Mr. CARTWRIGHT. Mr. Chairman, I yield back.

Mr. GRAVES. Mr. Moolenaar and then Mr. Bishop.

Mr. MOOLENAAR. Thank you, Mr. Chairman.

Director Mulvaney, good to see you again.

Mr. MULVANEY. Mr. Moolenaar, sir.

Mr. MOOLENAAR. Last year, we discussed the Soo Locks.

Mr. MULVANEY. Yes, we did.

Mr. MOOLENAAR. As you know, they are in northern Michigan. Your office was kind enough to work with us on clearing up a couple of issues. That being said, the Soo Locks, specifically the Poe Lock, remains a single point of failure in a multi—

Mr. MULVANEY. Did you just say Poe Lock?

Mr. MOOLENAAR. I know. I get a hard time every time I say that. It is the Poe Lock.

Mr. MULVANEY. I am as much Polish as I am anything else. I just don't know if I should take that, Mark.

Mr. MOOLENAAR. Well, a Homeland Security report dubbed the Achilles' heel of the Great Lakes navigation system and the North American industrial economy. Nearly 100 percent of our domestic supply of iron ore flows through this single lock, and a shutdown could cost 11 million Americans their jobs.

Last year, when we talked about this, you mentioned you had recently found out that OMB uses a discount rate of 7 percent whereas the Army Corps of Engineers uses a discount rate of 3.125 percent. In the unique situation we have with the Soo Locks, I remain concerned that policy, use, and feasibility analysis don't accurately assess or reflect the value and national significance of a project, as you know, that could significantly change how the project is viewed on paper.

Since that time, have you been able to determine why those two rates are used, and are there any changes that can be made that would help improve this process?

Mr. MULVANEY. It is a historical—I don't think it is statutory—it is a historical thing that OMB has used a number and the Army Corps has used a different number. We don't really think it changes many outcomes because, as long as we look at all of our projects at OMB with the same discount rate, it doesn't prejudice one program over another.

We are looking at a bunch of different ways to change the way we analyze this, along with the Army Corps, to sort of, for example,

prioritize non-Federal shares. But I do know that there was \$28 million for this project in the budget this year, which includes \$3 million for dredging and \$2 million for gate repair. So we did take your words to heart last year, recognized the importance of this, and look forward to continuing to work to improve that infrastructure.

Mr. MOOLENAAR. Because it is a 50-year-old piece of infrastructure—and I appreciate the maintenance efforts in trying to keep it up and running—but I think, in the long term, even in the near short term, we are going to have to have a new lock there. I just don't see another way around it.

I think the Assistant Secretary of the Army for Civil Works, Mr. James, is planning on taking a trip to the Soo Locks. I know he was interested in having someone from OMB go along with him to review the project. If that is something you could support, I think it would be a big help.

Mr. MULVANEY. We have done that for several Members of Congress in both parties and Governors as well to go out and actually physically look at the stuff, because you are right: a lot of times there is no substitute for actually going to look at stuff on the ground.

Mr. MOOLENAAR. Thank you.

And then another topic we discussed last time was the Great Lakes. As you know, the Great Lakes hold nearly 20 percent of the world's fresh water and 90 percent—95 percent of our Nation's supply of fresh surface water, and drinking water for 48 million people. They are vital for interstate and international economic commerce, bordering two countries.

Last year, I had asked you about what you saw as the Federal role in support of the Great Lakes. I know, in the budget, it didn't really reflect too much support. In the appropriations process, we have been able to fully fund the Great Lakes Restoration Initiative, but I was disappointed to see it was a 90-percent cut again.

I am just wondering if you are able to take a closer look at the Great Lakes Restoration Initiative and funding that.

Mr. MULVANEY. We absolutely will continue to work with you. And there are a lot of delegations, obviously, that are interested because it does touch seven States or I can't remember how many. That 90 percent reduction is actually not as much a reduction as the previous year. When I was here last year, I was defending a 100-percent reduction. I think one of the points that you made was that what was unique to the Great Lakes, at least unique in some fashion, was the international component and some of the other factors. So we did put I think \$30 million in the budget proposal. Obviously, the omnibus spent more than that. So we will continue to work with you on that.

We continue to have concerns about it, Mr. Moolenaar. Maybe the increase that we put in there last year as part of your inquiry should just signal our continued willingness to work with you folks.

Mr. MOOLENAAR. Just one last quick question on the high-intensity drug trafficking areas.

Mr. MULVANEY. Yes, sir.

Mr. MOOLENAAR. Do you have a timeline for HIDTA grants and programs to be available and what would be the best information

I could get to law enforcement agencies who might be interested in applying?

Mr. MULVANEY. This is going to be really close to an “I don’t know.” My understanding is that the grants are ongoing. Some grant programs fund all at one time. These are ongoing. So I don’t know the best way to answer your question, but we are happy to get you some more details on that.

Mr. MOOLENAAR. Thank you.

Thank you, Mr. Chairman.

Mr. GRAVES. Mr. Bishop, and then Mr. Yoder.

Mr. BISHOP. Thank you very much, Mr. Chairman.

Welcome, Mr. Mulvaney. I have got a couple of questions for you. The first one: The President’s budget request for fiscal year 19 proposes to slow the frequency of step increases and install a pay freeze for all employees in fiscal year 2019, while increasing performance-based pay for workers in “mission critical” areas.

GAO and the Chief Human Capital Officers Council Working Group have identified critical skills gaps in cybersecurity, auditor, human resources specialists, contract specialists, economists, and generally in the science, technology, engineering, and mathematics fields.

Can you tell me what mission critical areas will receive the increased pay under the President’s budget? Are they the same ones that were identified by GAO and the Chief Human Capital Officers Council Working Group, and if so, does that mean that law enforcement, air traffic controllers, lawyers, doctors, nurses, among others, won’t receive a pay raise in fiscal year 2019 under the proposal?

And let me just ask a second question quickly. You issued the “Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce” on April 12, 2017, and the memorandum lifted the hiring freeze instituted by the President on January 23, 2017. In addition, the memorandum sets forth steps that the executive branch department and agencies were directed to take to fulfill other requirements of the hiring freeze memorandum and the March 13 Executive Order 13781 on reorganizing the executive branch.

OMB was required to develop an agency reform plan, detail agency actions to achieve near- and long-term Federal workforce reductions, and outline agency actions to improve employee performance.

What progress has been made on developing the agency reform plan, and how will the reports be evaluated and reported, and what is the schedule for evaluating the implementation?

Mr. MULVANEY. Thank you, sir.

Very quickly, on the first matter, the proposal was rooted in data that we had that essentially—I am going to paint with a very broad brush here; I would be happy to get more detail in a followup, if you like—of the analysis of the way that we paid Federal workers seemed to indicate that we overpay at the lower levels and underpay at the upper levels.

Keep in mind, the GS system, which most of you work on—folks at the Bureau do not, which is why they can make so much more money at the Bureau of Consumer Financial Protection—but the GS system was created I think in 1949 and hasn’t really been dra-

matically overhauled since, and it has led to a situation where we pay entry level more than we probably should, but we don't pay the really advanced, experienced people as much as we should.

So, with the proposal, we say: Look, we are going to freeze everybody and then put a bunch of money in this pot to try and give us the flexibility necessary to reward the people that were really performing well.

Again, I hope we can all agree, with 2 million nondefense Federal workers, that some of them might be good at their jobs, and some might not be. Yet we come close to paying them pretty much the same. There can be improvements there. And that is what our proposal was based on.

As to the re-org, we have made a lot of progress in that, and we are hoping to I think roll it out in May, is when it is coming out.

How do we get to that reduction we talked about? One of the things we focused on is duplication of services. I am going to butcher the numbers here—and I apologize because I didn't expect this exact question—I think we have 46 different Federal workforce training programs across 16 different agencies. That doesn't make much sense, and it probably opens the question as to whether or not there is duplication of services that could be more efficiently provided.

And, by the way, we have data on some of them that actually work. The apprenticeship program, for example, we have hard data that says, if you go into an apprenticeship program, you are likely to get a higher paying job than you were if you didn't go in the apprenticeship program.

Most of the programs don't have that type of results-driven data. So what we try and do is redirect attention to programs that work and consolidate programs that don't.

Mr. BISHOP. I thank you for those answers. On the step increases, it seems to me that what you do when you put the freeze there and you remove those step increases is you remove the incentives to get people to work for the Federal Government who are highly skilled or who have hopes of a good career that would be remunerative to them and makes it less competitive than the private sector.

Mr. MULVANEY. I absolutely agree, Mr. Bishop. I contrast it with this: If you and I go to work at the Department of Commerce and we come in the exact same day, have the exact same background and you do a great job and I dog it, the tools available to our managers to differentiate between our pay are extremely limited. And we are trying to fix that. So that we do reward folks like you in that circumstance who do good work and make it easier to either pay me less or get rid of me if I am performing poorly. That is what we are shooting for.

Mr. BISHOP. But, normally, you do performance reviews.

Mr. MULVANEY. I do that actually at the Bureau. So it is not exactly apples to apples because of the way we are structured.

There used to be a five-category performance review, and you had to be in the top two to get your step increase or whatever we called them at the Bureau. The previous management reduced it I think to two, either pass or fail. I think the pass rate was 99-point-something percent. So you can effectively get to the point

where it is a completely meaningless review process, and we are trying to avoid that. We are trying to reward the folks who do a good job, because that is when we can look the taxpayers in the eye and tell them it is a good idea.

Mr. BISHOP. You could have gone back to the five-step review process.

Mr. MULVANEY. I am not going to tip my hat. I have a collective bargaining agreement with the union. Of course, any changes we would make would abide by all of our agreements with the third parties and so forth. So, yes, sir, we were going to look at ways to run the Bureau more efficiently.

Mr. BISHOP. Thank you. My time is up.

Mr. GRAVES. Mr. Yoder and then Mr. Amodei.

Mr. YODER. Thank you, Mr. Chairman.

Director Mulvaney, welcome back to the committee. I note the dialogue we have been having this morning about the CFPB and some dissatisfaction that some Members of Congress have with decisions that you have made at the CFPB.

This committee has actually been fairly bipartisan in its support for putting the CFPB back on budget and even has had some bipartisan support for the five-member board. And what I would suggest to my colleagues that are dissatisfied with your actions is that, if we want an agency that is unaccountable to Congress and has been called the most powerful, most unaccountable agency ever created in the Federal Government, then, depending on who wins the Presidency, you are either going to love or hate what the agency does, and there is going to be very little consistency, very little predictability, and those problems are going to, sort of, to the victor go the spoils.

It would be much smarter for those who proposed a CFPB in the first place to work with Republicans to reform it to make it an effective, consistent agency.

So I just sort of leave those comments. I think there are real opportunities, and I would encourage my colleagues across the aisle. I think we could really work together to reform and fix the agency in a way that might make both parties happier.

Mr. Mulvaney, I want to turn your attention to regulatory reform and recall Executive Orders 13771 and 13777. 13777 directed Federal agencies to create regulatory reform task forces. And my first question would be: Have all Federal agencies subject to this regulation successfully created their regulatory reform task forces? And if not, which agencies, and how far away are they from completion?

Mr. MULVANEY. I think everybody has, Mr. Yoder. If that is not the case, we will clarify. I am trying to think off the top of my head. Everybody has been in my office with de-reg ideas. So I imagine they—I have not asked that specific question. We judge them more by their conduct. And they are all working on the issue. So I imagine they have put them together, but I can clarify that for you.

Mr. YODER. That would be helpful. And then my second question is on Executive Order 13771 that required Federal agencies to identify two existing regulations to eliminate for every new regulation that is promulgated by the agencies.

Are all agencies subject to the executive order currently compliant with its requirements? And, if not, do we know which agencies aren't complying and what steps are being taken to bring them into compliance?

Mr. MULVANEY. It may be, Mr. Yoder, that individual agencies are not compliant right now. Because what we told them we would do was look at them on an annualized basis. So we did not require them to do two and then one and then two and then one. If you wanted to create a new one and then, after the fact, get rid of four, that was fine with us. We didn't want to micromanage how they did it.

And keep in mind, sometimes you have to put out a new regulation to fix an old regulation. Is that a deregulation or not? So it was a gray area there, and we tried to give them the flexibility. But they all know, by the end of the year, they have to be at the two-to-one.

The good news is, I think the last time I looked at this, writ large, we were 16 to 1 for a while and then 22, 23 to 1 after that. So we are exceeding those targets without question. Whether or not each individual agency is at two-to-one right now, I can't tell you.

Mr. YODER. Well, I appreciate your work and the work of the administration in that regard.

As we travel our districts and talk to small business owners and entrepreneurs and folks that are trying to create jobs and grow the economy, they feel palpable reductions in weight from the Federal Government on their efforts to create this economy. It is noticeable. We hear about it in the district.

I would love to see what numbers your administration is churning out in terms of the economic results of that, the correlation that we are seeing.

You know, Americans now, their second biggest line item in their budget is the expense of Federal regulation. I don't think most Americans realize how pervasive it is in everything they do, from buying groceries to buying a house to clothes for their children to paying for healthcare expenses.

So that hidden tax is really a regressive tax, hitting the poorest of our constituents the hardest, because it is a much bigger portion of their income. And so, when we look at things like the Clean Power Plan, one of the things that the left conveniently leaves out is who pays for it. Right. The poorest of my constituents, which their electric bill is maybe one of the biggest bills they pay, are going to pay for that. The richest of my constituents, they don't really even notice those expenses.

So these regulatory costs are a critical part of what you are doing when it comes to tax reform and the tax cuts that many working families in our districts or most working families in our district are receiving, but the regulatory reform is one that we need to continue to press on.

Mr. MULVANEY. You make an excellent point. I have often told the story—I think you and I have talked about this before—everyone tells the story about how, when you wake up in the morning and you turn on the lights, you are taxed; you go to the refrigerator, you are taxed; you turn the water on, you are taxed; you

get on your cell phone, you are taxed; you get in your car, you are taxed.

That same thing throughout your entire day can be said about you are regulated. That adds additional costs on top of the tax.

To answer your question, I don't think we have got really solid data yet on the individual contribution of that, but I will point out that the economy turned around before we passed the tax bill—before you passed the tax bill. That is in large part we think attributed to the deregulatory agenda of the administration, things we were able to do before taxes to jump-start the economy even before we expected to.

Mr. YODER. I can tell you I haven't had many constituents come and say: I wish I had a new Federal regulation that came from an unaccountable bureaucrat to respond to and which I don't have the personnel to handle.

That conversation has never happened. But I have had, as my colleagues will say, hundreds, if not thousands, of conversations or contacts from constituents who have said: This is making it harder for me to do my job. This is making it harder for us to provide customer service. This means our small banks are going to have to close. This means that we may not be able to keep our lights on.

We all, I think, need to agree in a bipartisan way that those regulations have a cost on people, and your relief of them is helping the economy in many ways maybe more than the tax cuts in a way that people don't necessarily recognize. So thank you for your work there, and I will yield back my time.

Mr. MULVANEY. Thank you, sir.

Mr. YODER. Mr. Amodei, and then Mr. Young.

Mr. AMODEI. Thanks, Mr. Chairman. Good morning, Mick.

As you can imagine, my questions might center more on the State of residence of the true superstar of the Mulvaney family, which is your brother.

Mr. MULVANEY. He likes to refer to it as Re-yes, not Re-no.

Mr. AMODEI. The short part first. You have—

Mr. MULVANEY. For those of you who don't know, my brother is one of his constituents, which frightens me to death, but that is fine.

Mr. AMODEI. Which is a fact that I try to lever every chance I get. Thank you for disclosing that, Mr. Director.

So, for the second year in a row, you have proposed in your budget stripping the unappropriated funds in the Southern Nevada Public Lands Management Act. I don't want to spend much time on it; just that I have, when all else fails, read the bill.

So I would like to ask for a followup in terms of—I get balancing the budget and things like that—but what OMB thinks is the authority for stripping those funds based upon a reading of the act, which says: Here is what you can use the money for.

I assume that that is something that you are going to have to take a look into. And if there is a strong case to be made, we think those are available for changing from what the purpose stated in the legislation is to put into the Treasury, then we would just like kind of citation to that authority.

Mr. MULVANEY. Yeah. And I don't know if I have to have specific statutory authority to propose a rescission, but I will speak to your

point, which is, listen, we would love to work with you. Here is the problem. That money has been sitting in that fund for a long time. You all have done some really good work. I have got some notes here. I think you spent like \$3 billion on this program already, which is great; it has worked to that point. But there is like \$600 billion sitting there. And some of it has been sitting there for several years. So we would love to work with you on figuring out a way to use it properly.

The one criticism of the plan is that you all have run out of good projects. So let's work together to find good projects so that you can use the money. If not, we will go back next year and ask for it to be rescinded again just because I am not in the job of letting \$600 billion of money sit around and not be well used.

Mr. AMODEI. I appreciate that, and I look forward to that. If there is some authority—you say, listen, I think it is general authority or whatever it is; I am not suggesting what the answer is—but whatever the answer is we would kind of appreciate that offline.

I want to draw your attention to an Interior account that deals with the Bureau of Land Management specifically. You and I had talked about it, and it is my fault that I haven't followed up on it since, but I will with your staff; you gave me the name of a person.

But I want to paint a picture for you, and that is, unlike no other State in the Nation, the Bureau of Land Management controls the vast, vast supermajority of the State, somewhere in the mid-80s. So I try to bring that point home by saying this: That State director and his or her six district managers control by a factor of 7 much more real estate in the State of Nevada than the Governor, the legislature, any county commission, and any city council, which means that their jobs are very, very important and that we need to have good people in there and they need to be staffed.

Now, I am not a guy who says more money is the answer to every problem, but when you talk about a Western State with growth issues like that and you have real estate slots that are open and other slots on the nonfire side of those budgets that have to do with the everyday multiple-use management of that Federal estate and it takes years to do routine stuff, it is like: Hey, we need to take a look at that.

And when I see budgets that, quite frankly, talk about moving that agency in Nevada back to 2011 levels, I am a little disturbed.

Now I get that we need to separate fire from the nonfire stuff, so we will do that already, but I want to let you know that I am going to be knocking on the door of your staff to say: Hey, if we have got people that are misused, then let's get them used directly, but that these kind of continuing cuts—and I won't speak for other States, but I will just tell you this—Mr. Stewart left—I would love to have control of 25 percent of the acres in my State. I am at about half of that.

So what that agency does in managing the Federal estate is phenomenally important. So we are going to be coming to you as we go through this process. We have done some stuff 10 years—we looked back 10 years, we looked at the last year, that sort of thing—to try to sensitize OMB as well as the budget folks, the Under Secretary for budget purposes at Interior to go: Hey, we

need to look at what the mission is here. Is it resourced properly? Do you need to move existing assets, things like the real estate slots?

As you can imagine the two urban areas of the State, Las Vegas and Reno, when those districts' offices are down on staff and it takes them 2 years to process a routine right-of-way request on an existing right-of-way, that may be some organizational issues, but I know when there are empty slots, there are also some resource issues.

So we are going to be kind of coming at you on that. I know what the history has been. And by the way, this is not a Republican thing. It is bipartisan. I know that State and defense are kind of the sexy things, but in my neck of the woods, no disrespect, Interior is a phenomenally important Federal agency.

Mr. MULVANEY. Well, I appreciate the work you have done with me, including when I was in this Chamber as one of your colleagues, on educating somebody from the Southeast, where the Federal Government owns almost none of our land—Mr. Graves is in the same situation in Georgia. I had no idea that happens. That influences things like BLM. It influences PILT, something you didn't mention. It influences fire management. So we do appreciate you taking the time to get us up to speed on those issues. I look forward to continuing to work with you.

Mr. AMODEI. I do, too.

Mr. GRAVES. Mr. Young, and then Ms. Herrera Beutler.

Mr. YOUNG. Thank you, Mr. Chairman. It is good to see you.

Director, \$20 trillion in debt. Both sides are complicit in this—

Mr. MULVANEY. Twenty-one.

Mr. YOUNG. \$21 trillion. Thank you for that, for clarifying.

Mr. MULVANEY. Sorry.

Mr. YOUNG. It is realistic. It is reality. That is where we are. We talk about the next generation, handing that down to them. We are probably, what, 10 generations down, what we are doing to the future of this country?

Tough decisions have to be made, primarily by Congress, through legislative means, but we need a willing partner at the other end of Pennsylvania Avenue as well.

How are we doing in convincing the President and your colleagues in the administration that we need to come to the table to really make these tough decisions? And they are going to be tough decisions, but we have to make them.

Mr. MULVANEY. Thank you for that, Mr. Young. I encourage you to take a look at the budget—I know you probably have—but look specifically at the proposals we have made in mandatory spending.

We come under criticism sometimes because people accuse us of not looking at mandatory spending, what some people call entitlement programs. And nothing can be further from the truth.

When the President ran, he said he wasn't going to change your Social Security or Medicare. And we don't. But we have made some really good proposals on how to change, for example, Social Security Disability Insurance, how to fix payments in Medicare to non-Medicare folks.

I had no idea until I got in this job that we use Medicare money to pay for graduate medical tuition. We use Medicare money to pay

hospitals for delinquent accounts from folks who didn't pay who aren't on Medicare.

So there are a lot of abuses of the system where money is siphoned off into other things. We propose to fix that. Those are big things.

The budget we sent up last year is the largest proposed reform of mandatory spending in the history of budgets. So we look forward to continuing to do that. Because you are actually right: a dollar is a dollar. We have to look for every one that we possibly can. You are absolutely right: you can't get \$21 trillion in debt without both parties being complicit.

We look forward to being part of the solution and working with you and the Democrats, if they like, on doing just that.

Mr. YOUNG. You and the President have a pretty powerful bully pulpit, and I would ask you to exercise it on this issue as often as you can.

Mr. MULVANEY. Yes, sir.

Mr. YOUNG. Regulations. First of all, you talked about your budget that you released. Thank you for that. You do it annually. It is the law.

I love the fact that at the end of the budget you have got a list of all the folks who worked on the budget. You have got their names there. They own it. When we introduce bills and amendments, we have to put our names on those bills and amendments.

When it comes to regulations, we talk about the nameless, faceless bureaucracy. We don't say that just to say it. It is pretty much true. Because when rules and regulations come out, nobody signs. The many, many people who work on those and issue those, we don't know who they are, because they don't sign their name to it.

I would just ask you again to look at a bill that I introduced, H.R. 1460, the Fingerprints Act, which says, under any administration, any rule or regulation that comes out, the people who work on it and write it, they have got to write their name on it and their title. I think that can be—because when you do that, when you own something, you are going to offer a better product because, if you don't, they know where to go. So there is a transparency there, and it is accountability, as well.

I think this is something you all can do administratively, if you really took a look at it, and I would ask you just to—

Mr. MULVANEY. That is a great idea. By the way, thank you for the comments about the Office of Management and Budget. I would love to take credit for that, but that is a longstanding tradition at OMB. I am pretty sure it is not statutory. They want to do it. They are proud of the work they do. They are just as proud of the work they do for this administration as they did for the previous administration. I have got some folks who I think who have been here since the Carter administration. I know I have had folks there since the Reagan administration. They are good bureaucrats. I know that has word has come under a lot of pejorative sort of attack, but they are good folks, and they take pride in their work. But you are absolutely right. There is no reason we could not do that voluntarily at every single agency, and I will mention that to the Cabinet.

Mr. YOUNG. Right. And on the budget, they put their name on it because they are proud to own it.

Mr. MULVANEY. Yes, sir.

Mr. YOUNG. They want to let people know. So thank you very much. Thanks for what you do.

Mr. MULVANEY. Thank you.

Mr. GRAVES. Ms. Herrera Beutler, you are recognized for questions.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman.

Thank you for being here.

A few different things. I do want to associate myself with the remarks of the gentleman from Kansas with regard to the regulatory reform. This is one of the areas where I agree it is not as easy to link the cause and effect, but we know we are seeing more economic vitality because we are deregulating, period. It is amazing to see. And you are right, that economic turnaround started before the Tax Cuts and Jobs Act, although now I think you talk about the 3.3 percent projected growth, I would add a big part of that is because we then followed on with tax reform. And that is why 1.5 percent wasn't good enough, at least not for the folks I serve and for the folks that the administration is serving. So I am very excited about what we are seeing there.

On the regulatory side, I think I could use your help in a few areas. The first one has to do with a bill that we passed—Congress passed in 2014. It was bipartisan. It marked more than 5 years of work by the west coast congressional delegation to fix problems with regard to West Coast fisheries. We call it the REFI Act. I can't tell you what the acronym stands for because I never pay attention to acronyms. But the bill was bicameral, and it had administrative support.

What it did was it provided authority needed to refinance the commercial fishing loans for fishermen participating in the Pacific ground fish fishery. However, as we sit here today, the bill is still not enacted.

So, while CBO noted that the legislation was fully graphic, meaning there were no new appropriations required, this is not difficult, and they were required to implement under law, OMB, under the previous administration, who had input beforehand—afterward, just said: Well, no, we are not going to do it. We need an additional \$10 million, and we need transfer authority to refinance the \$26 million loan.

It really—we have not gotten to the bottom of it. It has been very, very difficult. So these fishermen are facing very high regulatory costs that threaten to drive them out of business. While they fish, they have sacrificed—really, we are having a real difficult time here.

In addition to the regulatory costs, these fishermen pay the Federal Government another 5 percent off the top every single time they land their catch.

So, Congress passed it, the President signed it into law, CBO gave it a zero score, and yet we still cannot seem to get it moving. And I wanted to see if you could provide an update and you can help me identify someone on your staff to help, if there are specific challenges, have someone help us work through it.

Mr. MULVANEY. I have got some notes on it. I don't think it answers your specific questions. The person you can call is me. By the way, you are supposed to use my new email address at OMB; you can't use my old email address. It is very strange. I am now subject to FOIA.

By the way, this goes to all of you. If any of you have called me on my old number, I don't—it is John.M.Mulvaney@OMB or something like that.

Anyway, let me know, and we can get on it. I do have some notes, but I don't think I am going to be able to satisfactorily respond to your question. It may have to do with administrative PAYGO, is the first thing that comes to mind. But that is not a very satisfying answer. So we can get you something in more detail.

Ms. HERRERA BEUTLER. That would be great. It was something I wanted to get to the bottom of. It was something we passed a number of years ago.

The other thing I wanted to bring up, and it had to kind of follow along with what Mr. Amodei talked about with regard to Federal lands in the West.

Mr. MULVANEY. Yep.

Ms. HERRERA BEUTLER. I am glad this is an area where folks who maybe don't have as much Federal ownership in their land are joining the cause. One of the challenges I have really been seeing has to do with our Federal forests—I mean, there are a number of challenges—and what seems like an unwillingness of local regional directors in certain areas to just help us with good ideas.

So one of my counties is 97 percent owned by the government; 85-plus percent is federally owned. When the Federal Government came in and said, "You can't cut down any more of these trees, we are going to protect a bird," the families that depend on this land have really been driven near poverty. I mean, police, fire, counties, schools. It is a travesty.

They have had some really good ideas with comanagement ideas and with some of the local foresters. We have had great ideas. And I just can't get some of the bureaucrats who are sitting on top of it even to let us try some innovation.

And so this is an area where—and I realize you are not directly over Interior, but in terms of the budgets that you all submit, when you see that there is less revenue coming in and you make cuts, part of the reason there is less revenue is because of there is an unwillingness to work it in a way that is both beneficial to the environment and to the endangered American taxpayer.

So this is an area where I would like to maybe provide more information as we move forward and so that I think this can be more of a revenue-generator, quite frankly, and so you might not need to cut as much when you are looking at the forest lands, BLM, Fish and Wildlife. Again, another issue there. I think maybe if there is, again, someone on your staff or on your team, we could bend their ear. I would like to peel back some layers.

Mr. MULVANEY. We would be happy to talk about it because we absolutely agree. There is no reason for folks to know this, but when we sent up the supplemental on the forest fires, I guess it was last fall, we included a bunch of land management reforms be-

cause we know that, if you don't fix it, you are just going to have the same problems again and again.

I have talked to Secretary Zinke about this generally. There is a lot of stuff he wants to do. There is some stuff he can do administratively, but a lot of stuff is going to take statutory change. So we look forward to working with you on trying to get the necessary legal changes.

Ms. HERRERA BEUTLER. Absolutely. Tell us what tools you need. I have said that to him as well. I know there is a lot going on. I know you guys put together the budgets.

Mr. MULVANEY. Yes, ma'am. You have got it. I look forward to doing that with you.

Ms. HERRERA BEUTLER. I yield back.

Mr. GRAVES. Director, we may have a few more questions. I think some members still have some interest. I will start off.

I was intrigued by your comments earlier regarding the CFPB and your directorship there and the fact that you are not required to appear before the Appropriations Committee. There is no oversight. There is no accountability. But you seek that, which is against your own self-interest. So I applaud that.

Mr. MULVANEY. Actually, it is a little deeper than that, Mr. Chairman. It is not that I don't have to appear before the Appropriation Committees. The statute very specifically says that I shall appear before Congress twice a year—twice in the House and twice in the Senate, so four times—and that I shall appear. That is it.

Mr. GRAVES. Not respond, not reply.

Mr. MULVANEY. If you look at other sections of Dodd-Frank, other directors of other agencies and bureaus have to appear and testify or appear and answer questions. I just have to appear.

So I would suggest to you, as I suggested to Mr. Hensarling and Senator Crapo, that I could have come in, made my presentation, kicked back my feet up on the table, twiddled my thumbs, and not answered a single question. Obviously, I didn't do that. I stayed as long as they wanted to. We didn't even do a hard stop.

But ask yourself in the future: What if a Republican comes in? Are you going to be satisfied with that? Or, if a Democrat Director comes in, are you all going to be satisfied with that?

The bill was written very quickly. I can't remember who it was who said that bills that we do in response—maybe Mr. Stewart—to emergencies are sometimes not our best drafting efforts. This thing can be fixed and can be improved, and that is one of many, many examples.

Mr. GRAVES. I think it is in the best interest of each of our constituents to have accountability, whether we like or dislike the direction of the agency, to have that oversight, that accountability.

So, assuming that our efforts are successful and that Mr. Quigley and I and others can come together and agree in a bipartisan fashion that you should be under appropriations, as you have personally requested, what would you request in fiscal 2019? If you were to present your budget to us, what would it be?

Mr. MULVANEY. I think the number we put in was 450 and change. We are running it right now at just north of 6. I think 450 would take us back to 2015 levels. I don't think anybody was complaining that the CFPB wasn't doing enough in 2015. I think we

can run a very effective agency at that level. 485 was the number that we asked for in 2019. So someplace in that neighborhood would be the request.

Mr. GRAVES. Is that something you have seen in statute that we could do? Could we write that in this fiscal year 2019 appropriations bill?

Mr. MULVANEY. I have not seen anything that says you cannot. My guess is because the statute right now—the statute contemplates that we take money from the Federal Reserve and that, if there is not enough money in that to run the agency, then we have the ability to come and ask you for an appropriation.

I see nothing that says you can't appropriate on the front end. You all, in fairness, appropriate unauthorized programs all the time, even though you are not authorized to do that. The State Department hasn't been authorized for two decades I think.

So I think you absolutely have the ability to do it and look forward to chatting with you about that.

Mr. GRAVES. So it is very possible we could appropriate, which would then not require you to draw down from the Treasury. You would use those funds as appropriated.

Mr. MULVANEY. Let's make perfectly clear what the statute says. I don't have it in front of me. I am going to get it fairly close because I have looked at it more than once: I shall, taking into consideration other funds, ask for enough money from the Federal Reserve to run the Bureau. If there are other funds that are available to me through appropriation, that is money that I am completely entitled legally to consider in making my request to the Federal Reserve.

Mr. GRAVES. Thank you. A different topic. There has been a lot of discussion about CRAs, about some previous rule makings. Under the previous Director, Mr. Cordray, the CFPB had passed a few regulations or had pursued some in the small dollar credit area.

I know there is a CRA by Dennis Ross that has bipartisan support in the House, which is rare when it comes to a CRA. I know you are familiar with it.

Can you tell us a little bit about your thoughts about the CRA? Is it important that we pass that through the House? Does that impact your direction? And what steps are you taking currently so we can work in parallel?

Mr. MULVANEY. I love CRAs. As a bureaucrat, which for better or worse is what I am now—I am a member of the bureaucracy, I am a member of the executive branch of government, I am a bureaucrat, I am one director for one bureau, right—clarity is my friend. Clarity, by the way, is your friend because, if you leave stuff ambiguous, then I get to interpret it. You might like the way I interpret it. You might not like the way I interpret it. It would change depending on who is sitting in my particular chair.

You give me clarity. You give the executive branch clarity when you pass these CRAs. Not only, by the way, do you—and a lot of folks don't realize this—not only do you undue that which has been done, but you prevent us from doing it again. And that sends a very strong message, which is the legislature has spoken, and we

will follow the rules. Not only are we undoing what you did, don't go do it again.

That is the type of clarity that I would appreciate, as a member of the executive branch, because it allows me to focus my attention on stuff that I actually should be working on. If you don't want me to work in an area, tell me. And the way you do that is by passing a law. That is what a CRA is. We welcome more of those, not fewer.

Mr. GRAVES. What efforts are you taking internally to address this particular issue?

Mr. MULVANEY. That was the last thing that my predecessor passed. In fact, he passed it quite literally on his way out the door. And I got there and asked what my options were, and they said: Look, it is too late to undo. So we are not going to undo it, but it is completely within my discretion and my legal ability to give notice that we are going to reconsider the rule under the parameters of the Administrative Procedure Act, which is exactly what we are going to do. We are going to do notice. We are going to comment. We are going to collect data. It may be that I come to the same conclusion when reviewing the data that my predecessor did. I may come to a different conclusion. But we are going to follow the law. We have no preconceived notions about what we are going to do, but we are going to do it the right way. We are going to do it by the book. And we are going to follow the law.

Mr. GRAVES. Thank you.

Mr. Quigley, do you have any further questions?

Mr. QUIGLEY. Yes, sir. Thank you, Mr. Chairman.

Thank you, Director.

As I ask this question, Director, I would like your thoughts on the role you think OMB plays in overseeing agency resource practices. Purchasing. Okay. Our FSG appropriations bill in section 710 stated that the head of any department or agency appointed by the President may not obligate or expend funds in excess of \$5,000 to furnish, redecorate the office, or purchase furniture, or make improvements, unless advance notice of such furnishing or redecoration is transmitted to the Committee on Appropriations.

Obviously, Monday, the GAO found that the EPA Administrator had violated that 2017 omnibus spending bill. We are aware of a whistleblower at HUD discussing this, and Secretary Carson has been before other subcommittees discussing this. But they don't seem to be episodes standing in isolation. What role do you see OMB playing in overseeing these functions?

Mr. MULVANEY. We are actually involved in that process. We are aware of the GAO report at HUD. You didn't ask the question; we are aware of a similar GAO report at EPA. And we will investigate them.

We take the antideficiency statute very, very seriously. If they have been broken, we will follow the rules. We will enforce the law, and we will do so in a transparent fashion. Mr. Quigley, I am not interested in covering for anybody else.

Mr. QUIGLEY. Where are you in the process of those investigations?

Mr. MULVANEY. That I don't know. I know we just got the GAO thing. I was more prepared about the EPA because we just got that

report this week. And I know we have not started our work—have we started—either we have not or have just started our work on that.

Mr. QUIGLEY. I am sorry. Take your time. On which one?

Mr. MULVANEY. The EPA report. The GAO report.

Mr. QUIGLEY. Okay.

Mr. MULVANEY. I don't know where we are on the HUD one. It is a little bit older, so my guess is we are already into that one. But I can get back to you on that.

Mr. QUIGLEY. In your mind, what are the remedies over the repercussions as you go forward with this under the rules as you see them.

Mr. MULVANEY. Oh, HUD procurement did not happen? Was it a procurement issue?

Mr. QUIGLEY. I am aware he stopped it.

Mr. MULVANEY. That is fine. That is why I didn't know about HUD. Okay. Again, the antideficiency statute, what is it? It is spending money that is not appropriated. Since HUD didn't actually spend the money, it doesn't fall under the antideficiency statute.

If we were, let's speak more generally, to define an antideficiency statute violation. Technically, it is a criminal law. I don't think anybody has ever been charged criminally with a violation of the antideficiency statute. But we would talk to the lawyers and figure out what the appropriate statutory steps are that we are supposed to take. Again, we are going to be completely above board on this one. I am not any happier about it than you are.

Mr. QUIGLEY. Is there an education process that you see here? I mean, you are obviously in communication with these agencies. Is there—are you taking a tack now to put the others on notice that they ought to be aware of this, but if not, here are the rules?

Mr. MULVANEY. I think it is a misunderstanding of the role of OMB. We don't micromanage every particular expenditure in every particular agency. We are involved in the appropriations process, in the apportionment process, and so forth.

But it would not surprise me that something like this could happen at HUD or at EPA without us knowing about it. That would be very unusual I think for us to know about something. Again, a large sum of money, when you consider what was done, but in the greater scheme of the government, not something that might rise to the level of sharing with the Office of Management and Budget.

Mr. QUIGLEY. I guess, just to be specific, it is not your belief that, given what you have seen here and these episodes not standing in isolation, does it make sense to let the other agencies know that you are concerned about this, and are you contemplating that?

Mr. MULVANEY. Let me answer it this way: Earlier on, we had some issues within the administration regarding the use of private air travel. And what we did there was, under the auspices of the chief of staff, was put out specific rules, guidelines, and also bringing to the attention of the folks that the rules already exist.

There are rules on this, just like for me, there are for you, in terms of when you can buy business class travel, when I can pay for business class travel. There are rules. I think they come out of OPM, on when we can do that. To remind people of those rules, to

clarify those rules, and to the extent the administration wants to go further on those rules, which I believe we have, to let folks know about that, as well.

Mr. QUIGLEY. Thank you.

Thank you, Mr. Chairman.

Mr. GRAVES. Mr. Yoder, and then Mr. Cartwright.

Mr. YODER. Thank you, Mr. Chairman.

Director Mulvaney, just a couple of quick questions here.

I have heard from a number of constituents concerned about the Medicare durable medical equipment program, including patients who rely on home respiratory therapy in order to remain in their homes. Unfortunately, the CMS bidding system for durable medical equipment has hindered the ability of Medicare patients to access these vital devices.

I am aware that an interim final rule from CMS that addresses this issue is currently at OMB. The rule has been pending since August of last year. As you know, Congress included report language to accompany the fiscal year 2018 omnibus urging that the rule is finished.

Can you share an update on where this rule is in the process and how far away from finalization it might be and what steps OMB is taking right now to review the rule in a timely manner.

Mr. MULVANEY. I can share with you where it is in the process, Mr. Yoder, but because of where it is in the process, that is going to be the only answer I can give you, which is it is currently under review at the Office of Information and Regulatory Affairs. And we do not comment on the process once things are at OIRA.

I will say this: I probably receive more phone calls about this than any other rules put together. We are aware of the urgency to members of both parties. I am interested in getting it out as quickly as we possibly can. That being said, it is a fairly complex rule, and it is absolutely critical we get it right because of the scope of this one. So I won't be able to comment.

Mr. YODER. I don't think we can ask for anything more, other than you are clearly aware that this is a critical issue for a lot of our constituents, and you are going to work on it as fast as you can, but do it the right way.

Mr. MULVANEY. Yes, sir.

Mr. YODER. I also wanted to ask you about the Technology Modernization Fund, which was created under the Modernizing Government Technology Act, which Congress passed last year. I was a cosponsor of the legislation.

The goal of the fund is to allow government agencies to invest in technological improvements that can improve their services, strengthen cybersecurity, and increase efficiency. OMB's budget request includes \$210 million for the technology modernization fund. The fiscal year 2018 omnibus included a funding level of \$100 million.

Your agency released guidance in February with information from agencies on how they can apply for these funds. Can you just give the committee an update on the process of this program, as we know it is in its early stages, and what types of projects have applied for the funds and what outcomes are you hoping to see from a successful deployment of the TMF?

Mr. MULVANEY. Actually, I am not going to punt on this, but the woman in our office who actually is sort of running it is sitting behind me. So I encourage you after the meeting to grab her and get the specific details.

I think we have identified three programs so far.

So we have heard from nine, and we have not made any final decisions on who is going to get that first allocation of funds. But the process is—I think you would be satisfied with the way the process is working. I encourage you to reach out to my office, specifically Ms. Kraninger, who is sitting behind me, to get the specific details. We are very excited about the stuff that we have seen so far.

Mr. YODER. Do you expect greater participation? You have nine. Do you view this as something that you are going to see a lot of interest in?

Mr. MULVANEY. Yes, sir.

Mr. YODER. That is all I have, Mr. Chairman.

Thanks, Director Mulvaney. Keep up the good work.

Mr. GRAVES. Mr. Cartwright, you are recognized.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Mulvaney, I want to talk about a couple of things. First off is the new tax plan is going to add over a trillion dollars to the annual deficit. From your budget, it is pretty clear what you are trying to do is graphic the additional deficit by cutting programs that are important to the American people, programs like Medicaid and SNAP, and completely eliminating some programs, such as LIHEAP, the Low-Income Heating Assistance Program, which Americans depend on daily.

Of course, LIHEAP was started by Congress in 1984. So that it wasn't just about helping northern climates, we included assistance for cooling bills for Americans in warmer climates in the South. This is an enormously important program, Mr. Mulvaney. The budget that you wrote eliminates LIHEAP.

I come from a northern climate in northern Pennsylvania. Monroe County, Pennsylvania, has 3,495 homes that got LIHEAP assistance in the winter of 16–17. Lackawanna County, where Scranton is, had 6,573 family homes assisted by LIHEAP. Luzerne County, 11,803 homes in that winter were assisted by LIHEAP.

Do you really mean to cut these people off and leave them shivering in their homes?

Mr. MULVANEY. A couple of different things, Congressman. You mentioned that the new tax plan added a trillion dollars additional deficit this year. The total deficit is going to be roughly that number. So, clearly, the tax plan by itself does not account for 100 percent of that. Spending makes up a good portion of that.

Regarding LIHEAP, you are absolutely right: it was started in the 1980s. Our understanding is that almost every major utility provider in the country now has protections for the folks you just mentioned to make sure their utilities are not turned off in the wintertime up North and not turned off in the summertime down South. So, to a certain extent, the need that existed in the 1980s no longer exists.

Finally, you mentioned a couple thousand people in each of your counties. And I absolutely respect that. I represented a relatively

poor area of South Carolina. You didn't mention I think the 11,000 dead people who get LIHEAP.

So this is a program that screams out for reform. To the extent that our budget proposals have drawn attention to that, we welcome that, and would love to work with you on either fixing it or replacing it with something that actually works.

Mr. CARTWRIGHT. Well, come on. I mean, auditing it and making sure that the right people are getting it is a lot different from eliminating it. Don't you agree?

Mr. MULVANEY. Fine.

Mr. CARTWRIGHT. I want to shift gears. I want to talk about infrastructure for a moment.

Mr. MULVANEY. Sure.

Mr. CARTWRIGHT. Your budget addresses the much-talked-about infrastructure plan by proposing \$200 billion of Federal spending, which you believe will spur \$1.5 trillion in investment from State and local governments and private firms. But the bald reality is that many States cannot afford their mandated match under your plan for Federal infrastructure funding. That would cost States \$6.50 for every single Federal dollar invested.

So the question is, do you have a plan for State and local government infrastructure investment where they can't afford to match the Federal funding and can't attract the attention of private investors?

Mr. MULVANEY. Actually, they are doing it already. State and local governments account for about 86 percent I think of Federal—excuse me, total infrastructure spending. They are doing it already. What we are offering them is a way to leverage the money that they are already spending.

The classic example I give is of a road. Let's say, in your State, they cost \$100 million, and the State has figured out a way to raise \$80 million toward that \$100 million road. If we can kick in at the Federal level the additional \$20 million, that road will get built. That is a 4-to-1 ratio. That is a really good return on Federal money. Your road gets built; everybody is happy. So that is one of the fundamental underpinnings of the proposal.

Mr. CARTWRIGHT. Mr. Mulvaney, over half of State governments saw their revenue fall below projections last year, and they are not financially well off enough to match government spending the way your infrastructure plan envisions.

Mr. MULVANEY. Again, they are already spending the money.

Someone just handed me a note. They are absolutely right that the rural portion of the program, which I think is a full 20 percent, which is \$40 billion, is 100 percent Federal.

Keep in mind—Mr. Cartwright, I apologize. I forget where you are from. Is it a rural part of Pennsylvania? Is it a big city?

Mr. CARTWRIGHT. Northeastern Pennsylvania.

Mr. MULVANEY. Anyway, the matching portion of the infrastructure, which you have just mentioned, where we leverage Federal dollars, is more aimed at the urban areas where we can monetize infrastructure. We are talking about bridges, toll roads, ports, that type of thing.

In the more rural areas where I used to represent, you may represent, that is 100 percent federally funded. So we recognize those

realities. Listen, what we are doing now doesn't work. And just throwing more money at it doesn't work.

My guess is you voted for the stimulus package during the previous administration. It did not work. We need to figure out a way to actually build the stuff that people need, and we think we have done an effective way of proposing that.

Mr. CARTWRIGHT. Mr. Chairman, I yield back.

Mr. GRAVES. Thank you, Mr. Cartwright.

Mr. MULVANEY, I have another quick question, Mr. Quigley may as well, and our understanding is that the ranking member of the full committee is on her way and wanted to ask a question.

Mr. MULVANEY. If it would be possible then before she gets here to maybe take a 2-minute break, that would be lovely.

Mr. GRAVES. I am happy to do that. Let me give you one question to think about during your break with regard to CHIMPs—

Mr. MULVANEY. Goodness gracious.

Mr. GRAVES. One of your favorites—

Mr. MULVANEY. Yes. Everybody's favorite.

Mr. GRAVES. I know that you sent up a proposal recently, I guess it was just last week, reflecting some changes to the 2019 budget in regard to CHIMPs. We had a spirited debate about CHIMPs previously with the previous funding bill.

Obviously, I am very supportive of efforts to reduce spending and to restore some of the fiscal sanity around here. So can you just—we will take a break—but when you come back, maybe just share with us a little bit about that.

Mr. MULVANEY. I appreciate the accommodation. Thank you.

Mr. GRAVES. We will take a 2-minute recess.

[Recess.]

Mr. MULVANEY. Thank you. I appreciate that, Mr. Chairman.

Mr. GRAVES. Always happy to accommodate.

Mr. MULVANEY. CHIMPs, I remember learning about them when I was here, and it is one of those wonderful parts of Washington bureau-speak that no one really understands outside of here. In fact, most people here don't understand what they are.

Here is how I explain to the people and why we put them in the budget.

It is hiding spending, right? It is a way for us to spend more money than we want to tell people that we are actually spending. And I just don't think it is a good practice.

Did we get rid of all of them in the budget? No. It is actually very difficult to do that. Did we look at things like the Crime Victims Fund, which I think is the largest CHIMP that we use together on an annual basis to sort of move money around?

It is a bad practice. To the extent we can limit it, I think we are doing the taxpayer a good service. Not the fund, but in terms of the abuse of the CHIMP system. Again, I know we are speaking in appropriations language here that no one is going to understand, but it is not a good practice, I don't think, in terms of how we tell people how much we spend.

Mr. GRAVES. As you evaluate these, are you working with CBO? And how does CBO look at CHIMPs? How do they score CHIMPs reflected as a savings?

Mr. MULVANEY. They are an graphic towards spending. So I think they count them the same way we do. The two systems are the same.

Mr. GRAVES. Great.

Mr. Quigley, any questions?

Mr. QUIGLEY. Thanks again.

Mr. MULVANEY. Yes, sir.

Mr. QUIGLEY. We are waiting for our ranking member of the full committee to come back and just a couple of questions before then.

As you know, last August, the administration reversed the previously approved EEOC collection of pay data, a collection that was the product of a 6-year process which included multiple lengthy public notice and comment periods. This was the pay transparency requirements. The requirement in question stated that companies with 100 or more employees report how much they pay their workers by race, gender, and ethnicity.

My understanding is that OMB may review this data collection. It is my understanding that OMB may review and approve collection of information only if determines that the relevant circumstances related to the collection have changed or that the burden estimates provided at the time of initial submissions were material in error.

What information, if any, did OMB have to suggest that either of these criteria were met and where did that information come from?

Mr. MULVANEY. I don't have the exact figures in front of me. Mr. Quigley, I can get them to you. But off the top of my head, here is what we do. The reason it comes to OIRA in the first place is the Paperwork Reduction Act. My recollection is that, previously, the form had I want to say 180 data points on it. With the proposed change, it was 1,600 data points on it. So a firm would have to fill out 1,600 different pieces of information.

The whole reason it comes to us is to try and reduce paperwork. We made the determination that that was not helpful. Specifically, when we got into the details of what the information was asking, this is what we found.

I will give you this example. Under the heading of healthcare jobs, for example, the form did not differentiate between accountants and doctors. So, if you were a male accountant and a female doctor and you wanted to use this data form to try and determine whether or not genders were being paid properly, it would be completely worthless because accountants shouldn't make as much as doctors do; doctors should make more. This form failed to consider that.

So there was a Paperwork Reduction Act component. There was a substantive component to it. That accounts for the changes that we proposed.

Mr. QUIGLEY. In your mind, was any of the changes requiring—

Mr. MULVANEY. By the way, I want to make clear that those numbers—the factor of those numbers is correct; 180 to 1,600 may be off by a lot, but it is the general concept.

Mr. QUIGLEY. I understand. I guess the question is, was there any data, in your mind, that is not being asked for that was asked

before that would be pertinent to understanding pay disparity issues?

Mr. MULVANEY. Again, I don't know if that is our call. That is up to the agency that promulgates the rules. We review it under the Paperwork Reduction Act. They are the ones who actually promulgate the rules.

Mr. QUIGLEY. But the changes that we are talking about that you referenced, did it have any diminution in terms of collecting data that was pertinent to its purpose?

Mr. MULVANEY. It certainly had a diminution of value of the data. If the whole idea behind the form is to make sure that people aren't being discriminated against but the form itself actually makes that harder to do, then, yes, I would suggest that is a reasonable objection to the form.

Mr. QUIGLEY. I suspect this is—I am trying to buy a little time for our ranking member.

Mr. MULVANEY. I am happy to wait, by the way.

Mr. QUIGLEY. Here she is. I appreciate that.

Mr. MULVANEY. She is the ranking member. I understand how it works around here. I am happy to wait.

Mrs. LOWEY. You are so kind to wait. I am embarrassed.

Mr. MULVANEY. Not at all——

Mr. QUIGLEY [continuing]. —reading from a cookbook.

Mr. MULVANEY. Mrs. Lowey, how are you? Always good to see you again.

Mrs. LOWEY. Am I on?

Mr. GRAVES. Mrs. Lowey, you are recognized at any time you are ready to ask a question of the Director.

Mrs. LOWEY. And I do apologize. There are so many hearings going on at the same time.

Mr. MULVANEY. If anybody can understand that, Mrs. Lowey, it would be me, since I have been in the same shoes. But I am happy to answer your questions.

Mrs. LOWEY. Well, you are very kind, and I thank you.

Thank you, Mr. Chairman.

Okay. Director Mulvaney.

Mr. MULVANEY. Yes, ma'am.

Mrs. LOWEY. I am really baffled by the White House plans to submit a rescissions package to Congress seeking deep cuts to the bipartisan omnibus spending bill the President just signed into law. And I want to emphasize the bipartisan nature of it because, when I came to Congress, we used to say there were Democrats, Republicans, and appropriators.

Mr. MULVANEY. We still say that.

Mrs. LOWEY. I say that because there has been real cooperation between the Democrats and Republicans on the Appropriations Committee.

In fact, the first media reports on this emerged within days of the President's signature, which I find particularly outrageous. After all, the White House had plenty of opportunity to weigh in during the lengthy negotiations.

We keep hearing the administration's objection is fundamentally about the sum of dollars being allocated toward nondefense discretionary funding. This figure, as you know, was in the spending

agreement and signed into law by the President just a few weeks earlier.

So, I must say, this whole exercise seems to me a bit bizarre. We have a responsibility to the American taxpayer to provide Federal agencies with regular and certain budgets so they can adequately execute their missions in an efficient and transparent manner.

So, by proposing to rescind funds that have just been distributed, it seems to me you are causing an even greater degree of chaos and confusion for the agencies. It certainly isn't a good way to govern.

In fact, I was just talking to Chairman Frelinghuysen. We were talking about the next round. I said: Just give us the 302(b)s now when we can get it all done earlier.

So a couple of questions. Was the President aware of the details of the spending agreement and omnibus negotiations before signing them into law? If so, how can the President pretend the compromise was new to him? And if not, why is no one in the administration properly briefing the President of the United States?

Mr. MULVANEY. Certainly. Thank you for that question. Let's go back to how this happened. Certainly, we knew the top lines. We knew the top lines for several months because we had agreed to them in the so-called caps deal I think that was in late January or early February; I can't remember when it was.

But, in fairness, Mrs. Lowey, we didn't actually see the bill until I think Wednesday night. And you all voted on it on Thursday. The details, ma'am, the details are what—

Mrs. LOWEY. It was this big.

Mr. MULVANEY. It was only 2,000 pages. You didn't hear the President complain about the top line numbers. You heard him complain about some of the individual line items. So that is what rescissions are designed to go after.

Keep in mind he also said, look, he is signing this because he likes part of it, but he said on the day that he signed it that there were things he didn't like.

Rescissions—and I am not familiar with how long you have been in Congress, but you may have been around the last time. We actually—we used to do rescissions here all the time. Both parties did. Presidents of both parties have done rescissions. In fact, the first President not to do one was George W. Bush. President Obama didn't do one either.

Rescissions used to be the ordinary course of business around here. I think there have been over a thousand passed by the House and Senate, passed after other spending bills have been passed, usually on a bipartisan basis. Many folks who are saying now they don't want to vote for rescissions because it undoes an agreement have voted for them in the past.

It may be that there is money in the rescission that you didn't know was in there or that you don't want to spend or that you have changed your mind about. There may also be—and this is critical, and this doesn't get nearly enough attention—money that we will ask to be rescinded, that is not in the omni. There are carryover funds to the tune of several hundreds of millions dollars, if not more, from previous years that we might just say: Look, the need for that money being spent is gone. Times have changed. We have new priorities. Let's rescind that money.

So there are a bunch of different ways to look at a rescission. I don't think you can look it at through just the perspective that you have offered. There is an opportunity here to simply revisit it. You may agree with us; you may disagree with us. We do that all the time, but we don't think this is unusual. We don't think it is something that is unprecedented. And we certainly don't think it is something that indicates going back on any type of agreement.

Mrs. LOWEY. Well, except for the fact, I would like to remind all of us, that the deadline was October 1. That is normal procedure, correct?

Mr. MULVANEY. Yeah. And we compliment the House. You all did—

Mrs. LOWEY. A few months after that. It took us a long time to get this bill done. And I am not going to say to you that I loved every line in the bill, but that is democracy.

Mr. MULVANEY. Right.

Mrs. LOWEY. I was really so proud of all the—as the ranking member, proud of the Democrats and the Republicans, because they really worked together in a bipartisan way. And remember, what took all the time was getting that top number because, unless you have the 302(b)s, you really can't divide everything up.

So, for me, I just wonder, do you really believe that, after spending countless hours of precious legislative time already this year to keep the government open—and remember, we are way past the deadline—that spending more time to unwind what Congress finally put to bed is a wise and responsible use of congressional and administrative time and money?

And I also want to say I was honored to be appointed to this special committee that is supposed to be figuring out how we can operate more effectively and more efficiently. I said in our first meeting: Well, if we got our 302(b)s done early enough, we would be able to operate more effectively and more efficiently.

So I guess my question to you: Are you planning to consult with the committee as you develop the rescission proposal? When will Congress be briefed?

Hopefully, you won't have a rescission proposal, and you will take all your great, creative ideas and submit them to the committee.

I know you looked up to see if I was serious about that.

Mr. MULVANEY. You had a smile on your face as well when you said that.

Mrs. LOWEY. Well, you are correct. So I would hope, and I am sure all our chair and ranking members, you would give us a lot of input as we do the next round and we get the 302(b)s earlier, which I certainly suggested to the chairs, so that we can do our work, and we don't have to put a couple of thousand page bill on the desk at the end.

So are you going to consult with the committee as you develop the rescission proposal? And when will Congress be briefed?

Mr. MULVANEY. A couple of different things. Thank you. I didn't realize you were on that committee. I assume that is the Committee on Budget Process Reform, which we absolutely welcome.

We recognize the fact the House actually did its work last year. I think you all passed all 12 of your appropriations bills. So, when

we say there is a problem with Congress passing its bills, we know where that problem lies, and it is not in this particular room.

We encourage—I will make that very clear—we encourage anything that gets us back to regular order. The President is serious in his threat not to sign another omni. I think that would be a welcome threat to Members of both parties in this Chamber because you all don't want an omni either. As you have mentioned, you didn't like the whole thing, and that is the nature of compromise, but I think we all agree that omnibuses are not—omnibi?—omnibuses are not the way to run a government.

I always laugh when folks ask me about keeping the government open because I was in the unusual circumstance several months ago of being the one trying to open the government with a lot of folks who accused me previously of wanting to shut down the government, having those folks being the folks who actually voted to shut down the government.

I don't know how you voted on the CR during the government shutdown, but there are a lot of folks who—the roles were reversed, so to speak. It is always enjoyable to talk about that, to see some of my Democrat friends vote to shut the government down.

We do think it is a good use of time. Again, it was a good use of time in previous administrations. We do look forward to working with the committees. I have already started to talk with the House leadership about this. It is probably too early to come to the committee specifically, but we will work with you.

We don't have to, by the way. The law doesn't require us to do that. We can just send it to you. If we send it to you, I think we can freeze the spending for 45 days. We, actually, with a very small group of supporters in the House and Senate, can force a vote on the floor. We would much rather work with the House on this because we think, again, if we are able to find stuff we all agree on—in 2,000 pages, there might be one line that you and I both agree should not be in there. And that is what rescissions are for. So we do think it is a good use of time, and we will certainly get a chance to find out if it is.

Mrs. LOWEY. Mr. Chairman, if I may ask one other the question since you were kind enough to wait for me to come back from another hearing.

You have campaigned as a fiscal conservative, Director Mulvaney, and you argued for major spending cuts when you were first elected to Congress in 2010. In 2013, you even supported major budget cuts to graphic the emergency disaster relief package passed through areas like mine, which were ravaged by Superstorm Sandy.

However, as OMB Director, you have defended the GOP tax scam, despite the fact that the CBO shows it will add \$1.8 trillion to the deficit over the next decade. You defended a repeal of the Affordable Care Act, which would reduce health insurance coverage nationwide and increase the deficit. And you offered a budget which doesn't even attempt to balance.

I would be interested, if you want to share it with us, why have your thoughts on this issue changed so dramatically, and we still haven't fully met our obligations to areas recovering from natural

disasters? In fact, I listen to NPR every morning. Maybe your choice of stations is different.

Mr. MULVANEY. I have listened before, ma'am. That doesn't bother me.

Mrs. LOWEY. I am just saying that I was really upset this morning because they were talking about Puerto Rico and how the electric grid still isn't up, and there are so many homes that still are not functioning.

So I wonder, are tax cuts more valuable to you than relief for areas suffering extreme damage after a natural disaster strikes?

Mr. MULVANEY. Let's talk about the tax cuts, and we can talk about the supplemental very quickly.

I saw the CBO report. I would encourage you—we talked about this before you were here. I apologize for going over it again. But they make some very pessimistic assumptions about economic growth, the health of the American economy beyond about 2 years. They tell us we are going to go back to the 1.8, 1.9 percent growth. That accounts for a lot of that \$1.8 trillion deficit you talked about.

However, I think a lot of folks overlook that if you actually look at the revenue flows year by year, by the 10th year, even under the CBO numbers, we are generating more money than we would have before the tax bill. So the tax bill is actually generating new money to the government.

Even the CBO, with its low assumptions on growth, projects that the American economy will be \$6 trillion larger at the end of that 10-year window than it otherwise would be. That is huge. That is bigger than most countries. It is just the addition brought on by our policies.

So we absolutely do defend the tax bill and think it has been a tremendous benefit to the American people. Most folks are much better off than they were before it, and we are welcome to defend that.

On the Puerto Rico issue, goodness gracious, Mrs. Lowey, I think that the total supplemental emergency funding for disaster relief was over \$100 billion.

Money has not been the difficulty. I just got handed a note: 96 percent of customers have power now. The challenge is with the grid that—keep in mind, more people have power now in Puerto Rico than had it before the storm. The problem has been a structural deficiency down there that predates the storm. You and I both know that one of the limitations of disaster relief is you are not supposed to let people be better off than they were before the storm. We are actually doing that in Puerto Rico. They are going to be better off. We are making an exception for them.

So I think I can make the argument we are treating them better than we treated the folks who were in New York and New Jersey during Superstorm Sandy.

We look forward to working with you and with Puerto Rico on helping them get back on their feet, but I can assure you, in my mind, ma'am, the difficulty they are having is not for a lack of Federal funding.

Mrs. LOWEY. Well, let me just say to you—and I want to thank the chairman again for giving me the opportunity to have a discussion—I hope we can have further discussion as we approach the

new—hopefully, it won't be an omnibus. Hopefully, we will be able to do regular order.

Mr. MULVANEY. It will have to be something other than an omnibus because we are not signing one.

Mrs. LOWEY. Well, I am optimistic. Frankly, as I said to the chair just yesterday, give us the 302(b)s now and let's know the rules of the road. Once we get the rules of the road, then we have to work together, and I hope in a bipartisan way, and there can be differences of opinions.

Certainly, when we finish this bill, there are about, what, 160 poison bills? Some of them may be perfume to some Members. I think they may be poison. We can have differences of opinion, but that is what democracy is all about.

I do hope that, rather than creating a process with rescissions today, next week, we can work together on the next series—I am careful not to say an omnibus—and put these 12 bills together in a constructive way, certainly with your input, and I hope it will be regular order.

So, as soon as we get the 302(b)s, then we know the framework, and we can move forward. So thank you very much.

Thank you, Mr. Chair. I appreciate your waiting.

Mr. GRAVES. It was good to have you join us today.

Director, you will be pleased to know we are on an accelerated timetable when it comes to appropriations. We had success last year. It was the first time in over 10 years that the House passed all 12 appropriations on time—early, in fact—3 weeks early. This year, we are going to try to accelerate that and have everything out of the House by mid-June, early July. So this team here has been working really hard. I know your team has been working really hard.

Mr. MULVANEY. Notice the staff just rolled their eyes at that comment.

Mr. GRAVES. But we are moving. We are moving quick. We look forward to having all of our bills out of committee within the month of May.

Mr. MULVANEY. We appreciate everything you folks could do and your staff could do—and we look forward to working with you folks—to get back to regular order. Everybody is well served by that.

Mr. GRAVES. We will work to that end, and we will be creative in some of the packages we put together. We refer to them as unified appropriations, as we reported all 12 out last year in a very open, regular order process in which every amendment was considered, and they all went to the Senate to sit and be peered at I suppose by the Senators. This year, I hope we get to see a little progress from the Senate.

Let me commend your team. You have got a great team that surrounds you. They allowed you to get out of here today without saying “I don't know” for too long, right?

Mr. MULVANEY. They even got Stewart's birthday. I mean, come on? What are the chances of that?

Mr. GRAVES. Very good. We do appreciate your team. They have been fantastic to work with. We look forward to working with you in the days ahead.

With that, the meeting is adjourned.

Financial Services and General Government Subcommittee
Hearing on the Office of Management and Budget
for Director Mick Mulvaney.

Questions for the Record Submitted by Chairman Graves

Manufactured Housing

Manufactured housing is an important and affordable homeownership option in Arkansas. However, several years ago, the CFPB implemented new rules on HOEPA rules and thresholds that have made it harder for lenders to originate lower dollar amount manufactured home loans – the category of homes that are the most affordable. This development is not just backed up by anecdotal evidence. HMDA data shows that in the two years after 2014 as the new HOEPA rules were put into place, that while the overall number of manufactured home loans increased, the number of loans below \$75,000 fell. The CFPB has indicated it is undergoing a thorough review of CFPB rules and policies. Moreover, the CFPB has the statutory authority to fix the problems with the HOEPA thresholds.

Question: Will you commit to reviewing this data, exploring its relationship to the HOEPA thresholds, and adjusting the thresholds to the appropriate levels as appropriate?

Response: The Bureau understands that caps on points and fees under HOEPA or ATR/QM can disproportionately affect low-dollar mortgage loans, including manufactured home loans. Yes, the Bureau will commit to studying market developments in this area, and will then decide whether to adjust the thresholds and by how much, as appropriate and authorized by law.

Questions for the Record Submitted by Congressman Quigley

Management of OMB

In the Partnership for Public Service's Best Places to Work in the Federal Government annual rankings, OMB employees ranked their agency #7 out of 28 small agencies. This would seem to be good news. However, OMB's overall score declined significantly in almost every individual area studied, in particular in the category for effectiveness of senior leaders.

This category measures employee views on management at the senior level.

While other agencies, including, for example, GSA, experienced substantial improvements in this category since 2016, OMB experienced its' largest decline in 2017, dropping nearly 23 points from last year.

Question: What have you learned about the managing of this critically important organization since your confirmation, and what will you do to promote a culture at OMB that enables and recognizes a high-performing workforce?

Response: I am pleased to report that in 2017, OMB maintained its status as one of the top 10 Best Places to Work in the Federal Government in the Partnership for Public Service's (PPS) annual rankings. While OMB's PPS ranking decreased in certain individual areas studied, OMB increased in 31 of the OPM Federal Employee Viewpoint Survey (FEVS) questions—upon which the PPS rankings are based—since 2016. OMB also maintained its high response rate of 81.5%, beating the government-wide average

response rate of 46%. I am especially pleased to report that OMB continued to lead the government with a 74% Employee Engagement score, and 73% Global Satisfaction and New IQ scores. I am particularly impressed by the fact that 99% of employees at OMB have stated that they are willing to go the extra mile to get the job done.

The results are encouraging, demonstrating that OMB's hard work over the last year in key areas made a real difference. For example, our "supervisor" employee engagement score concerning the interpersonal relationships between employees and supervisors—which includes trust, respect, and support—increased by four percent (from 84% to 88%). In addition, with respect to the New IQ—which relates to the inclusiveness of the work environment—our scores increased in four of the five sub factors, including "cooperative" and "supportive" rising by four and three percentage points, respectively.

That said, as noted, we also had decreases. Many were relatively nominal, but a few were not. Most concerning to me was our "leaders lead" engagement score, and the responses regarding OMB's senior leaders. Obviously, as a senior leader, this is especially troubling. I immediately began efforts to explore why the numbers dropped as precipitously as they did, and have been committed to taking deliberate and specific actions to make improvements.

I have implemented several ongoing initiatives to encourage more frequent and varied interactions between the OMB staff and me. These include publicly recognizing the ongoing efforts and great work produced by OMB staff through several methods, utilizing communication tools, meetings, e-mails, newsletters and encouraging initiatives that engage and acknowledge our high-performing staff.

I recognize that in 2017—like all transition years—there was a lot of change and uncertainty. Despite all the challenges, I regularly communicate to OMB staff that they continue to provide unparalleled service to the Federal government and American citizens. I routinely find ways to thank them for their continued dedication, hard work, and long hours. Moreover, I make clear that I welcome their partnership and engagement as we develop and execute plans to address those areas where our workforce has told us we have work to do.

Questions for the Record Submitted by Congressman Simpson

OMB Apportionment for Corps of Engineers Project Repairs

The most recent supplemental appropriations bill provided approximately \$1.8 billion to the Corps of Engineers to repair federal and eligible non-federal projects damaged in various natural disasters, including Hurricanes Harvey, Irma, and Maria. I was disappointed to learn that even now – more than two months after enactment – this funding has not been apportioned by OMB to the Corps.

In passing the supplemental, Congress intended the Corps to begin immediately to repair the most critical damages. Consistent with longstanding practice and congressional intent, the Corps should be allowed to address the highest priority damages on a rolling basis, as conditions change, as more information is incorporated, or as contract bids come in with savings or additional costs.

Furthermore, many of the projects in need of repair must contend with seasonal, environmental, or other regulatory requirements, which create limited windows of time in which work can be done. For example, many projects in the South Atlantic region have environmental windows that prevent work from occurring in the summer. The delay in apportionment of the funds to repair damages may very well mean that these communities are unnecessarily vulnerable to storms, floods, and other natural disasters for an additional year.

Questions:

1. What is the delay in OMB apportioning the funds to repair damages? At the very least, why has OMB not yet apportioned even the funds the administration requested?
2. What is the timeline for OMB to apportion all of the damage repair funds?
3. Is OMB aware of and taking into account required environmental or regulatory windows for repair work to take place in making apportionment decisions? If not, why not?
4. What steps are you taking to ensure similarly needless delays do not happen again in the future?

Response:

The Administration requested \$499 million in total for the Army Corps of Engineers for repairs of infrastructure damaged by Hurricanes Harvey, Maria, and Irma. The Bipartisan Budget Act of 2018, Public Law 115-123, enacted on February 9, 2018, appropriated \$17.398 billion. As of the date of the hearing (April 18, 2018), OMB automatically apportioned these funds as provided by OMB Circular A-11 Section 120.41; the automatic apportionment began on the date of enactment of the Bipartisan Budget Act of 2018.

The Army Corps of Engineers civil works program (Corps) is developing a plan for the use of the funds appropriated in the Bipartisan Budget Act of 2018, Public Law 115-123. For the funds appropriated to repair eligible Federal and non-Federal infrastructure damaged by natural disasters, the Corps is allocating these funds on a risk-informed basis for eligible work, reflecting its technical assessment of the damage to projects. The Corps has announced two rounds of funding for projects so far on this basis:

- On April 30, 2018, the Corps announced that it has identified 31 projects in 11 states, which sustained damage from recent hurricanes and previous storms. The Corps estimated that repair of these projects would cost about \$360 million of the \$608 million appropriated in the Operation and Maintenance account.
- On May 21, 2018, the Corps announced that it has identified 48 locally owned flood risk management projects in 11 states and one territory, which sustained damage from recent hurricanes and previous storms. The Corps estimated that repair of these projects would cost about \$424 million of the \$810 million appropriated in the Flood Control and Coastal Emergencies account.

The Administration supports the Corps effort to develop a plan for using the funds that the Congress appropriated. The Corps is developing its plan in stages, starting with the highest priority work. OMB has been urging the Corps to expedite this process. In selecting the work that it plans to fund, and the timing for that work, the Corps considers required environmental or regulatory windows, where applicable.

Questions for the Record Submitted by Congressman David Young***Durable Medical Equipment***

The Committee has been working closely with durable medical equipment suppliers, patients, and providers to stabilize a Medicare benefit that allows patients who utilize this equipment to stay in their homes. There is an Interim Final Rule currently at OMB since August that would extend the blended rate for non-competitive bidding areas.

Question: What steps are being taken to ensure OMB reviews and releases the final rule? Are you supporting the efforts of HHS to make changes (such as utilizing a clearing price, requiring bids on lead products, separating oxygen and sleep equipment into separate categories, and using actual capacity for rates) prior to the launch of the next round of the competitive bidding program?

Response: On May 11, 2018, CMS issued the interim final rule with comment period titled, “Durable Medical Equipment Fee Schedule Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Rural Areas and Non-Contiguous Areas.” The rule resumes the transitional blended fee schedule rates for items furnished in rural areas and non-contiguous areas (Alaska, Hawaii, and United States territories) not subject to the competitive bidding program from June 1, 2018 through December 31, 2018. In addition, I look forward to working with HHS to implement the next round of the competitive bidding program.

Technology Modernization Fund

The FY18 NDAA included the Modernizing Government Technology (MGT) Act. The MGT Act established the Technology Modernization Fund (TMF) to administer the funds. The TMF board will receive proposals from agencies and dispense funds to update critical technologies.

Question: Your agency put out guidance earlier this year on how agencies can apply for this money. Do you have any updates on the progress of the program and types of projects that have applied for these monies?

Response: So far, more than two dozen proposals ideas have been provided (per OMB Guidance M-18-12). The proposals range from retirement of legacy mainframe systems, to transition to cloud email, to modernization of citizen-facing government portals, cross agency process improvement and use of new technologies. Proposals have ranged in dollar size from just over \$1 million to upwards of \$40 million. While the Board is still working through evaluations of initial submissions, six proposals have already moved forward to Phase 2 of the process. OMB and GSA (who supports the Board through a Program Management Office) are actively working with those agencies to help them prepare their Phase 2 materials – business case, execution strategy, repayment models, and project milestones to a finer level of detail – along with their “Shark Tank” style pitch. We expect to be announcing funding determinations for these projects very soon.

WEDNESDAY, APRIL 25, 2018.

MEMBERS' DAY

Mr. GRAVES. We will call this subcommittee to order.

I want to welcome today some Members from both parties of the House to testify about priorities that they have submitted to the Financial Services and General Government Committee. We are here to hear these priorities. As a subcommittee, we have had over 2,000 requests submitted. And today, we have some individuals who want to come and present those requests in person. That is an increase of 36 percent over last year, which I would say is a testimony to this subcommittee and the full committee of advocating for the importance of getting priorities and ideas and policy into the appropriations process, because this is really how you get things done. So I am grateful that we have a few folks here today.

In this hearing, we are going to do a couple of things. This is a member-to-member discussion about some of these priorities and good communication for us. And also, it shows a great example of coordination between Appropriations Committee and authorizing committees.

And so as we take the opportunity to listen to one another today, we will give consideration to the Members as they present their ideas and have given us some time.

And I am honored today to have the acting ranking member, Mr. Cartwright, join us as well. And he is welcome to commend any comments before we start.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

The chairman is normally happy to have me as acting ranking member, because this is a role in which I have to behave myself.

I want to say welcome to the Members. You know, they pay us to do this, talk to each other and listen to each other. And that is what I am here to do.

So thank you for being here. And I look forward to your testimony.

I yield back, Mr. Chairman.

Mr. GRAVES. Thank you very much, Mr. Cartwright.

Well, first, I would like to recognize the gentleman from Missouri, Mr. Luetkemeyer, who is from the Financial Services Committee. He is chairman of the Financial Institutions and Consumer Credit Subcommittee on that committee. We will give you a moment here to get yourself settled in and get the mic set up.

But, Mr. Luetkemeyer, we know that you have given a full testimony of your request, and that has been submitted to the committee. And we have all taken time to read that. I look forward to hearing your comments and your ideas. But I appreciate you taking time to join us, and you are welcome to share with us. You have 5 minutes at your disposal there.

STATEMENT OF HON. BLAINE LUETKEMEYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. LUETKEMEYER. Thank you, Chairman Graves, and Acting Ranking Member Mr. Cartwright. I appreciate your comments.

My goodness, you certainly have my respect if you have got 2,000 requests to go through. You have got to have awful good staff, or you are going to burn the candle at both ends. So I thank you for your service and for all your hard work.

For millions of customers and small business owners who rely on our financial system each and every day, overregulation from Washington has meant increased fees, fewer services, and diminished access to credit. It has held back both growth and opportunity for the American people.

As chairman of the Financial Services Subcommittee on Financial Institutions Consumer Credit, it is a message I hear multiple times every day, whether here in Washington, back home in Missouri, or traveling through any city or State around our great country.

Through the appropriation's process, the Subcommittee on Financial Services and General Government has the ability to foster broader availability of credit and promote economic freedom. To me, economic freedom is what makes us, this country, what it is today.

Consumer Financial Protection Bureau, CFPB, has buried consumers and our economy under an avalanche of regulations. To be clear, it is important to guard consumers against discriminatory practices. There is no doubt about that. Yet in doing so, we must be cautious the enforcement pendulum does not swing too far and do too much harm—do more harm than good. For these reasons, I respectfully request the subcommittee seriously pursue reforms to the CFPB. Chief among them, the placing of the Bureau on a regular appropriations schedule. Such a move would provide greater accountability and transparency at an agency until only very recently was neither accountable nor transparent. It is also a move that CFPB's Acting Director and our former colleague, Mick Mulvaney, has said is essential. He was in our committee last week and made this request along with three others as—reforms that he felt would be important to make the CFPB work better, to be more accountable and transparent.

CFPB is not the only Federal financial regulator that has harmed American consumers and small businesses, in my judgment. We should all work to identify ways to end, once and for all, Operation Choke Point, the FDIC- and DOJ-led initiative that seeks to prohibit legally operating businesses from the financial services they need to not only do business, but to survive.

Over the last several years, members of the Financial Services Committee and the broader House have expressed broad bipartisan concern surrounding Operation Choke Point. The underlying problem here is significant. The Federal Government should not be able to intimidate financial institutions into dropping entire sectors of the economy as customers, based not on risk or evidence of wrongdoing, but purely on personal and political motivations.

In October last year, the Financial Services Committee passed H.R. 2706, my Financial Institution Consumer Protection Act by a

vote of 59–1. That same legislation passed the House on December 11th, 2017, by a vote of 395–2. This commonsense, non-controversial bill would simply ensure that Federal financial regulators cannot suggest, request, or order a financial institution to terminate a banking relationship unless the regulator has material reason beyond reputational risk, which, quite frankly, the regulators have yet to tell me how they can define.

This legislation is so non-controversial that the FDIC has already used its authority to put the provisions into place. For that reason and given that the House overwhelmingly approved the measure by a near unanimous vote, I respectfully request that the subcommittee consider inclusion of H.R. 2706 in the upcoming FSGG package.

I also urge the subcommittee to identify provisions to offer targeted regulatory relief to financial institutions.

Under the leadership of Chairman Hensarling, the Financial Services Committee has advanced dozens of bills to offer targeted relief to financial firms, banks, and credit unions. Where appropriate, I would urge the subcommittee to consider inclusion of these provisions into your appropriations legislation.

My colleagues and I stand ready to work with you in order to do that. Mr. Chairman, I thank you and the members of the subcommittee for your consideration of these ideas and opportunity to testify today. I look forward to working in a collaborative way on these issues and also working with Chairman Hensarling and my colleagues in the Financial Services Committee on these efforts to promote economic independence across our great Nation.

With that, Mr. Chairman, I yield back.

[The information follows:]

Oral Testimony
The Honorable Blaine Luetkemeyer (MO-03)
Member Day
House Appropriations Subcommittee on Financial Services and General Government
April 25, 2018

Chairman Graves, Ranking Member Quigley, thank you for the opportunity to testify.

For the millions of consumers and small business owners who rely on our financial system each and every day, over-regulation from Washington has meant increased fees, fewer services, and diminished access to credit. It's held back both growth and opportunity for the American people.

As Chairman of the Financial Services Subcommittee on Financial Institutions and Consumer Credit, it's a message I hear multiple times every day, whether here in Washington, back home in Missouri, or traveling through any city or state around our great country.

Through the appropriations process, the Subcommittee on Financial Services and General Government has the ability to foster broader availability of credit and promote economic freedom.

The Consumer Financial Protection Bureau, or CFPB, has buried consumers and our economy under an avalanche of regulations. To be clear, it's important to guard consumers against discriminatory practices. There's no doubt about that. Yet, in doing so, we must be cautious the enforcement pendulum does not swing too far and do more harm than good.

For these reasons, I respectfully request that the Subcommittee seriously pursue reforms to the CFPB; chief among them, the placing of the Bureau on the regular appropriations schedule. Such a move would provide greater accountability and transparency at an agency that until only very recently was neither accountable nor transparent. It's also a move the CFPB's acting director, and our former colleague, Mick Mulvaney, has said is essential.

The CFPB is not the only federal financial regulator that has harmed American consumers and small businesses. We should all work to identify ways to end, once and for all, Operation Choke Point, the FDIC and DOJ-led initiative that seeks to divorce legally-operating businesses from the financial services they need not only to do business but to survive.

For the last several years, members of the Financial Services Committee and the broader House have expressed broad bipartisan concern surrounding Operation Choke Point. The underlying problem here is significant. The Federal government should not be able to intimidate financial institutions into dropping entire sectors of the economy as customers, based not on risk or evidence of wrongdoing, but purely on personal and political motivations.

In October of last year, the Financial Services Committee passed H.R. 2706, my *Financial Institution Customer Protection Act*, by a vote of 59 to 1. That same legislation passed the House on December 11, 2017, by a vote of 395 to 2. This commonsense, noncontroversial bill would simply ensure that federal financial regulators cannot suggest, request or order a financial institution to terminate a banking relationship unless the regulator has material reason beyond reputation risk.

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Mr. Chairman, I thank you and members of the subcommittee for consideration of these ideas, and for the opportunity to testify today. I look forward to continuing our collaboration on these issues, and to working with Chairman Hensarling and my colleagues on the Financial Services Committee on these and other efforts to promote economic independence across the nation.

With that, Mr. Chairman, I yield back.

Mr. GRAVES. Thank you, Mr. Chairman. And let me just thank you for last year. I know you were a champion in this arena, and you have a unique background that lends you to be an expert in this area and a champion for the credit markets and for making sure that our consumers, our constituents, have access to credit.

So thanks again for bringing these ideas forward. I don't have any questions for you.

Mr. Cartwright, do you have any questions, or Mr. Bishop?

Mr. CARTWRIGHT. I do not have questions, Mr. Chairman. But I want to echo your praise for the member for that fine bill you brought up, the Financial Institution Consumer Protection Act. I voted for it. And, in fact, only two voted against it. So a nice piece of legislation.

Mr. LUETKEMEYER. And, actually, one of those has actually—wished he had voted for it now. He has told me so. It is down to one. That is okay. We all make mistakes, right?

Mr. CARTWRIGHT. Thank you for your testimony today. Thanks for good work in Congress.

Mr. LUETKEMEYER. Thank you.

Mr. GRAVES. Mr. Bishop.

Mr. BISHOP. Thank you. I have no questions. Thank you for your testimony, and I think your points are well taken.

Mr. GRAVES. Thank you, Mr. Luetkemeyer. We look forward to doing our best to include some of your concepts, if not all, into the process, as we move forward.

Mr. LUETKEMEYER. I appreciate your consideration, Mr. Chairman. Thank you.

Mr. GRAVES. Let's welcome Mr. Young to the hearing.

Mr. Young, did you have a comment real quick before Mr. Luetkemeyer—

Mr. YOUNG. It is just a pleasure to be on this committee with all of you.

I yield.

Mr. GRAVES. Thank you for that.

Next we have Mr. Barr, the gentleman from Kentucky. We thank you for joining us. Another member of the Financial Services Committee, and another leader on these issues. You engaged deeply with this subcommittee last year. We thank you for that and look forward to hearing your testimony that you have today. And we know that you submitted something for the record as well, which has been recorded.

But the next 5 minutes are yours to use however you wish, Mr. Barr. Thank you.

STATEMENT OF HON. ANDY BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. BARR. Thank you, Mr. Chairman and Ranking Member Cartwright. Thank you. Good to see all of you all here. Thanks for the opportunity for giving me a chance to talk a little bit about a couple of ideas for your appropriations bill.

There is two bills in particular that I believe should earn your consideration for inclusion in the 2019 FSGG Appropriations package. First, the Taking Account of Bureaucratic Spending Act,

known affectionally as the TABS Act, and the Preserving Access to Manufactured Housing Act.

As appropriators, you know that one of the most important powers of Congress enumerated in the Constitution is the power of the purse, which is the most effective tool available to the legislative branch to hold the executive branch accountable. Unfortunately, the Dodd-Frank Act exempts the Consumer Financial Protection Bureau from the appropriations process, instead allowing the Bureau to grow its funds directly from the Federal Reserve subject to an opaque and arbitrary formula. This arrangement means that the Bureau will draw about \$6.7 billion over the next decade without the approval of Congress, and without any oversight in how that money is spent. Our oversight in the House Financial Services Committee has exposed some abuses because of this.

This deprives Congress of its most important oversight tool, the power of the purse, which, as Madison wrote in *Federalist* Number 58, may, in fact, be regarded as the most complete and effectual weapon with any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutatory measure.

The Taking Account of Bureaucrat Spending Act would put an end to Bureau extravagances and bureaucratic overreach that come at the expense of our constituents by establishing, for the first time, Congress' proper oversight of this Federal agency.

Specifically, the bill amends Dodd-Frank to limit the authorization of the agency and subjects the Bureau to the annual appropriations process. Congress and the American people deserve a say in how much taxpayer money the CFPB gets, how it spends it, and whether the Bureau is fulfilling congressional intent and whether it warrants reauthorization. No more blank checks to the CFPB.

Now, for the second bill. Affordable housing is of critical importance to families across the Nation. But today's Federal regulations are making access to manufactured housing more difficult to obtain. This is particularly concerning, considering that 45 percent of current manufactured homeowners have an annual household income of less than \$30,000, 13 percent of manufactured homeowners are retirees, and 15 percent of owners are unable to work or are disabled.

To these people and others, manufactured homes offer value at a price that can't be beat. The fact that our government has regulations in place that stifle their ability to purchase a manufactured home is frankly appalling. Earlier this year, a hospital worker in Kentucky applied for a loan of \$38,500 to finance a manufactured home. He had an 8 percent downpayment. His monthly income was \$2,200 a month, plenty to cover the all-in housing cost of \$670 per month.

The payment for his own home would have been less than what he was spending on rent, but he was unable to get financing. He contacted his local banks and credit unions, but they no longer financed manufactured homes.

So why are the lenders not lending? First, the CFPB has a definition of high-cost loan that fails to take into account the fact that the fixed costs associated with purchasing a house do not change relative to the cost of the housing. In other words, points and fees

on a \$70,000 manufactured home will likely be similar to the points and fees on a \$400,000 home. Nonetheless, the current definition discriminates against manufactured homes. And the banks, credit unions, and other lenders are following the rules set forth by the Bureau.

Second, the government's definition of loan originator is limiting the ability of manufactured housing retailers to help potential buyers find the financing they need. Thus, because potential borrowers are getting less help in finding potential lenders, fewer manufactured homes are being purchased.

Now, this second issue is included in the bipartisan Senate-passed financial services regulatory relief bill, and we think and are hopeful that that will ultimately find its way into law. But the first problem associated with manufactured housing lending, that still is not addressed by that package. So we think that that is—that the loan limit issue needs to be addressed in the Appropriations bill.

So, again, the legislation that we are referring to here is the Preserving Access to Manufactured Housing Act. It will fix these problems. It will make it easier for Americans to afford a manufactured home for themselves and their families.

Inclusion of this bill in the FSGG 2019 appropriations package would end the practice of the Federal Government protecting people right out of home ownership, and instead, more Americans will have access to affordable manufactured housing again. We all believe that greater access to affordable housing is something that all of us, Republicans and Democrats, can agree on.

And, again, I thank you for the opportunity to speak today, and I am more than happy to answer any questions about either proposal.

Thank you, Mr. Chairman.

[The information follows:]

Speech for FY2019 FSGG Appropriations

Rep. Barr

4/25/18

Thank you Chairman Graves, Ranking Member Quigley, and other members of the subcommittee for the opportunity to testify today. There are two bills that I believe should be included in the 2019 FSGG appropriations package: the Taking Account of Bureaucrats Spending Act –known affectionately as the TABS Act - and the Preserving Access to Manufactured Housing Act.

As appropriators you know, one of the most important powers of Congress enumerated in the Constitution is the power of the purse, which is the most effective tool available to the Legislative Branch to hold the Executive Branch accountable.

Unfortunately, the Dodd-Frank Act exempts the Consumer Financial Protection Bureau (CFPB) from the appropriations process, instead allowing the CFPB to draw its funds directly from the Federal Reserve subject to an opaque and arbitrary formula. This arrangement means that the CFPB will draw about \$6.7 billion over the next ten years, without the approval of the Congress and without any oversight of how this money is spent. This deprives Congress of its most important oversight tool--the power of the purse, which, as Madison wrote in *Federalist Paper No. 58*: “may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”

The Taking Account of Bureaucrats’ Spending (TABS) Act would put an end to these CFPB extravagances and bureaucratic overreach that come at the expense of our constituents by establishing, for the first time, Congress’s proper oversight of this federal agency. **Specifically, the bill amends Dodd-Frank to limit the authorization of the agency and subjects the CFPB to the annual appropriations process.** Congress and the American people deserve a say in how much taxpayer money the CFPB gets, how it spends it, and whether the CFPB is fulfilling congressional intent and warrants reauthorization. No more blank checks to the CFPB.

Now for the second bill....

Affordable housing is of critical importance to families across the nation, but today’s federal regulations are making access to manufactured housing more difficult to obtain. This is particularly concerning considering 45 percent of current manufactured home owners have an annual household income of less than \$30,000, 13 percent of manufactured homes owners are retirees, and 15 percent of owners are unable to work or are disabled. To these people and others, manufactured homes offer value at a price that can’t be beat. The fact that our government has regulations in place that stifle their ability to purchase a manufactured home is appalling.

Earlier this year a hospital worker in Paducah, KY applied for a loan of \$38,500 to finance a manufactured home. He had an 8 percent down payment. His monthly income was \$2,200 per month - plenty to cover the all-in housing costs of \$670 per month. The payment for his own home would have

been less than what he was spending on rent. But he was unable to get financing. He contacted his local banks and credit unions but they do not finance manufactured homes.

Why are the lenders not lending?

First, the Consumer Financial Protection Bureau's definition of "high-cost" loan failed to account for the fact that fixed cost associated with purchasing a house do not change relative to the cost of the housing. In other words, points and fees on a \$70,000 manufactured home will likely be very similar to the points and fees on a \$400,000 home. Nonetheless, the current definition discriminates against manufactured homes and the banks, credit unions, and other lenders are following the rules set forth by the CFPB.

Second, the Government's definition of "loan originator" is limiting the ability of manufactured housing retailers to help potential buyers find the financing they need. Thus, because potential borrowers are getting less help in finding potential lenders, fewer manufactured homes are being purchased.

However, H.R. 1699, the Preserving Access to Manufactured Housing Act, will fix these problems and make it easier for Americans to afford a manufactured home for themselves and their families.

This legislation amends the definition of "high-cost" loans to more easily accommodate manufactured home purchases of up to \$75,000 and creates a new "rate trigger" on points and fees for such loans. Additionally, this legislation excludes any retailer of manufactured homes from the definition of "loan originator" as long as they receive no compensation for helping a buyer secure financing for the purchase of manufactured home.

Inclusion of this bill in the FSGG 2019 appropriations package would end the practice of The Federal Government "protecting" people right out of home ownership, instead more Americans will have access to affordable manufactured housing again. I believe greater access to affordable housing is something that democrats and republicans can agree on.

Again, thank you for the opportunity to speak today and I am free to answer questions about either proposal.

Mr. GRAVES. Thank you for joining us today. You have been steadfast on these issues, and I share your same concerns. We had the Director of OMB before us last week in the Financial Services Subcommittee and in Appropriations. But for the first time ever, we actually had the Director of CFPB before us, and he shared some of the same concerns about being under our oversight and how currently that is not the case. So I am in agreement with you on that, and I think there are members of this panel that are as well.

But thanks for your good work on this.

Are there any questions from Mr. Cartwright, or comments?

Mr. CARTWRIGHT. I have none.

Mr. GRAVES. Mr. Young.

Mr. YOUNG. No. Just a comment that the longer an agency develops a culture where they are not accountable to anybody, and that deepens, and they can become renegaded. And the only way to draw that back in is to have that oversight, and that is Congress. And using their funding as a leverage tool, and that is ultimately accountability to the taxpayers as well. And so I wholeheartedly support what you are doing with the TABS Act.

Mr. BARR. Thank you, Mr. Young. Can I respond to that really quickly?

Mr. YOUNG. Yes.

Mr. BARR. I would say that that should, for all of us, be a bipartisan concern. This is not at all a—and it should not be a partisan issue. It is really an issue of defending the institution of the legislative branch.

Administrations come and go. Some of us prefer the current administration; some of us, maybe on this side of the aisle, prefer the previous administration. But in both cases, we had abdicated our oversight function to the executive branch to basically run itself. Republicans may like what is going on with the CFPB right now. Democrats may not. Similarly in the previous administration, Republicans may not have liked what was going on in the CFPB. Democrats may have actually liked what was going on.

But in either case, we, as the legislative body, should have oversight. And I think that is where we can get a bipartisan agreement on this reform proposal.

Thank you.

Mr. GRAVES. The gentlemen yields.

Mr. Cartwright.

Mr. CARTWRIGHT. Mr. Barr, I appreciate your comments and your testimony. And everything that you have said, I understand it, it makes sense.

But I guess the larger question I am wondering is, is there not a rule for a truly independent body? I mean, we want—and there are such bodies, like the Fed, for example. There are those who are running around say “Audit the Fed” and “Let’s get control of the Fed.”

But I think it is for the very same reason, because of the frustration in not being able to control that body. How do you feel about that?

Mr. BARR. Well, I actually support legislation that would bring the supervisory regulatory functions of the Fed also under congress-

sional appropriations. I believe in independence of the Fed, particularly with respect to monetary policy. I respect the fact that we have independent regulatory agencies.

But what makes the CFPB unique is that unlike other independent regulators, like the Securities and Exchange Commission, for example, this is not a bipartisan commission. This entity is a single director accountable to no one, a 5-year term. And even the President that appoints the director cannot remove this person without cause. So there is restrictions on removal power; there is restrictions on congressional oversight, because we don't have control over—we don't have power of the purse over this entity. And there is even limits on judicial review. So there is just a lack of checks and balances that our Founding Fathers envisioned with any agency.

Mr. CARTWRIGHT. Not to cut you off, but do you think that problem arises to the level of a constitutional violation?

Mr. BARR. I do.

Mr. CARTWRIGHT. Has that been litigated at all?

Mr. BARR. It has been litigated in a district court. And the D.C. district court has actually struck—a judge, a Federal judge, struck down the structure of the CFPB as unconstitutional. That was appealed. But the question has not ultimately been taken under consideration by the U.S. Supreme Court.

My view is, and we all have a responsibility in the Congress to assess the constitutionality of the laws that we pass.

Mr. CARTWRIGHT. Don't wait for the court.

Mr. BARR. Not just the courts. My personal view is that the structure of this Bureau is unconstitutional. There are such entities as independent regulatory agencies that I believe do satisfy constitutional scrutiny. I do not believe this one is one of those.

Mr. GRAVES. Mr. Cartwright, I don't think Mr. Barr is advocating for the abolishment of the CFPB, just the oversight of it. Many of the other independent agencies are under the oversight of Congress through other authorizing committees that come and testify. But as the Director pointed out last week, he has no legal responsibility to do that other than to appear.

Mr. CARTWRIGHT. He did point that out.

Mr. GRAVES. I think Mr. Barr is saying there should be an act of responsibility, and the ability to question and give a little bit of direction, so——

Mr. BARR. Right.

Mr. GRAVES [continuing]. The gentleman's points are well made. Let me see if Mr. Bishop has any questions.

Mr. BISHOP. I have none.

Mr. GRAVES. Mr. Barr, thank you very much. We appreciate your advocacy here. I think you know last year this same provision was carried within this bill, and we will give it the same consideration as well this year. I appreciate Mr. Cartwright's comment as well.

Mr. BARR. Thank you.

Mr. GRAVES. Next we will have the gentleman from Colorado. Mr. Tipton has joined us as well. Mr. Tipton, this is a very casual opportunity for you to share a concept with us. We want to thank you for bringing this before us. We have had over 2,000 requests towards this Appropriations Subcommittee bill, and yours is one of

those. If not, I think you might have made a couple of requests as well. We want to thank you for that, because you are bringing a unique idea to us, and we want to give it full consideration. So thank you for your 5 minutes presentation here, and we look forward to hearing from you.

**STATEMENT OF HON. SCOTT R. TIPTON, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF COLORADO**

Mr. TIPTON. Well, thank you, Chairman Graves. I want to thank the committee as well for this time and, frankly, all hard work that you all are doing. I know it is a tough left to be able to—actually, to be able to address.

And I would like to be able to start out by saying that I really support the idea of being able to return to regular order in the appropriations process. And I am encouraged by the work that this committee is doing to be able to get Congress back on the right track.

Our current system of dysfunction on spending measures will leave a wealth of uncertainty for our future generations. And I firmly believe that the way to be able to mitigate that uncertainty is going to be through an open appropriations process where all 12 appropriations bills are debated and passed. And obviously encourage our Senate counterparts to be able to do the same. We must also make sure that we provide certainty for the future generations, that their way of life will be preserved as well.

There are two federally funded initiatives that will help our communities now and in the future. They are the Community Development Financial Institutions Fund, and the High Intensity Drug Trafficking Area Program.

The CDFI fund plays a unique role in generating economic growth across the United States, and especially in my district in Colorado. By fostering and creating and expanding capacities of community-based financial institutions that specialize in providing affordable credit, capital, and financial services, the CDFI fund builds businesses, creates jobs, and revitalizes neighborhoods.

One CDFI-backed institution in Fort Garland, Colorado, for example, which is in my district, was able to finance a small grocery store in town. While this may not seem like much, to many of us, the presence of a grocery store can make a huge difference in a rural town.

Because of the CDFI, I was able to use the funds Healthy Food Financing initiative, the small rural community of Fort Garland now has significantly improved access to fresh, healthy foods. This happened to be a grocery store I had the opportunity to be able to tour. A small town. Those couple of jobs, couple of part-time jobs, I don't think we can overstate in those communities.

The impact of the CDFI having on those rural communities is obviously encouraging to economic growth, and I would encourage the committee to continue to support the program, especially as it serves to benefit home buyers, small businesses and families in communities across our country.

And I would also like to be able to talk about something that is impacting many of our communities across the country in terms of drug trafficking. High Intensity Drug Trafficking Area program,

called HIDTA, is a critical tool, utilized throughout the United States by local law enforcement, and officers to be able to combat drug trafficking and dealers.

In my district, the HIDTA has enabled local law enforcement officials to yield big results in pursuing drug cartels and help control the inflow and movement of illicit substances, particularly in Pueblo County. In addition to Pueblo County, there are four HIDTA-designated counties in my district: La Plata, Mesa, Garfield and Eagle Counties. By expanding the resources to these communities, our smaller law enforcement agencies receive crucial assistance in combating illicit actors.

In addition, my office is also working to extend the HIDTA designation to other counties in the four corners region of Colorado to further improve law enforcement's ability to combat cartels that are active and well-established in the area.

The HIDTA program makes our communities safer and helps reduce the amount of violent crime that is often associated with narcotics activity. I understand that Federal resources are limited, and I appreciate your consideration for my request for continued funding of both of these programs, programs function as an active benefit to our communities in my part of Colorado and would encourage your support.

[The information follows:]

Congressman Tipton Testimony for FSGG Subcommittee Hearing
4/25/18 in Support of CDFI Funding

- I'd like to thank Chairman Graves for having me in today to testify on behalf of a few programs that are important to the Third District of Colorado.
- Mr. Chairman, I'd like to start by saying that I support a return to regular order in the appropriations process, and I'm encouraged by the work that this Committee is doing to get Congress back on the right track. Our current system of dysfunction on spending measures will leave a wealth of uncertainty for our future generations, and I firmly believe that the way to mitigate that uncertainty is through an open appropriations process where all twelve appropriations bills are debated and passed.
- We must also make sure that we provide certainty to our future generations that their way of life will be preserved. Two federally funded initiatives that will help our communities now and in the future are the Community Development Financial Institutions Fund and the High Intensity Drug Trafficking Area program.
- The CDFI Fund plays a unique role in generating economic growth across the United States, and especially in my district in Colorado. By fostering, creating and expanding capacities of community-based financial institutions that specialize in providing affordable credit, capital and financial services, the CDFI Fund builds businesses, creates jobs, and revitalizes neighborhoods.
- One CDFI-backed institution in Fort Garland, Colorado, for example, was able to help finance a small grocery store in town. While this may not seem like much to many of us, the presence of a grocery store can make a huge difference in a rural town.

- Because the CDFI was able to use the Fund's Healthy Food Financing Initiative, the small rural community of Fort Garland now has significantly improved access to fresh, healthy foods.
- The impact that CDFIs have on rural communities cannot be overstated, and I encourage this Committee to continue to support the program, especially as it serves to benefit homebuyers, small businesses, and families in communities across our country.
- I'd also like to talk about the High Intensity Drug Trafficking Area program. HIDTA (*high-da*) is a critical tool utilized throughout the United States by local law enforcement officers to combat drug traffickers and dealers.
- In my district, HIDTA has enabled local law enforcement officials to yield big results in pursuing drug cartels and help control the inflow and movement of illicit substances, particularly in Pueblo County. In addition to Pueblo County, there are four other HIDTA designated counties in my district: La Plata, Mesa, Garfield, and Eagle. By expanding resources to these communities, our smaller law enforcement agencies receive crucial assistance in combating illicit actors.
- In addition, my office is also working to extend the HIDTA designation to two other counties in the Four Corners region of Colorado to further improve law enforcement's ability to combat the cartels that are active and well-established in the area.
- The HITDA program makes our communities safer and helps reduce the amount of violent crime that is often associated with narcotics activity.
- I understand that federal resources are limited, and I appreciate your consideration of my request for continued funding for both of these programs. These programs function to the active benefit of our communities in my part of Colorado, and I urge your continued support.

Mr. GRAVES. Thank you, Mr. Tipton. You bring up two very important topics. I want to thank you for your commitment to small business and investment in local communities, but also safe communities.

The CDFI grants that you referenced represent the number one request we receive from all Members, Republican and Democratic. In fact, 14 percent of all the requests relate to that. So thank you for that. In the top five as well would be the safer communities and investments against illegal drug distribution and use. So you represent a lot of Congress here with your interest today. So you can be assured these will be taken into deep consideration as well.

Mr. Cartwright, any thoughts or comments?

Mr. CARTWRIGHT. No. I want to thank you for appearing before us today and for your testimony. I appreciate it.

Mr. TIPTON. Thank you.

Mr. GRAVES. Mr. Bishop.

Mr. BISHOP. Likewise, I would like to thank you for your testimony. I don't have any questions.

Mr. GRAVES. Thank you for joining us today and bringing these ideas forward. We spoke before you came in how this is great importance for authorizing committees to be working with appropriating committee, the Appropriations Committee, to advance some of these ideas. So thank you very much.

Mr. TIPTON. Great. Thank you, Chairman.

Mr. GRAVES. Thank you.

And for the subcommittee here, we had another submission, a request to attend but who cannot join us because of another conflict. I think a markup was scheduled, Mr. Schneider.

So without objection, we will forego that testimony. But I think you have a print of his statement in your material here that you are welcome to read. I thank everybody for participating today, for the bipartisan feel here of requests and also input.

So with that, and no other members before us, we will adjourn.

Written Testimony for Financial Services Subcommittee, Appropriations

Hon. Brad Schneider, Illinois's Tenth Congressional District

April 25, 2018

Mr. Chairman, Mr. Ranking Member, and distinguished colleagues of the Subcommittee, thank you for this opportunity to speak before you. I am here today to request robust funding of the Small Business Administration (SBA), including programs of particular importance to the residents of my district and our country.

America's 29 million small businesses form the foundation of our economy and I am proud to serve on the House Small Business Committee, whose mission is to protect and assist small businesses. Next week I will be visiting small businesses across Illinois's Tenth District during National Small Business Week to discuss how we can help these companies grow. SBA plays a key role in this growth, and offers many programs to small businesses to help them overcome challenges, recover from disasters, gain access to capital, grow and prosper. However, the SBA needs adequate funding to continue to deliver its vital assistance.

First, I would like to address SBA's Entrepreneurial Development Programs, which includes entrepreneurship education and veterans outreach.

Entrepreneurship Education within the SBA provides resources such as business development and growth assistance and financial literacy for small businesses and entrepreneurs. Here in Congress, it is our job to help ensure that innovative entrepreneurs with great ideas have access to the educational resources and information they need to succeed. This will allow our small businesses to thrive and ultimately create jobs, ensuring that the United States remains the best place in the world to start and grow a new business. I therefore strongly encourage this subcommittee to continue its support for the SBA's Entrepreneurship Education program when drafting its FY 19 bill.

Of particular note, service members new and old rely on their wide range of experience serving their country when transitioning back into civil life. Entrepreneurship embodies many of the skills they developed, from project management and personnel decisions to communication and logistics. SBA's Boots to Business program, under the Office of Veterans Business

Development, helps service members put these skills to use. They are introduced to entrepreneurship during their Transition Assistance Program and are connected with the SBA resources they could use to develop their own business plan and establish mentors.

Boots to Business represents just one of the many programs SBA manages to assist transitioning servicemembers and veterans. I urge this committee to provide robust funding for Veterans Outreach because it serves as a vital resource for those individuals who have already given so much. Entrepreneurship represents a prime opportunity for these individuals to leverage their service in the Armed Forces, and these resources help make their dreams of running a small business become a reality.

I also respectfully request this committee provide strong funding for Small Business Development Centers (SBDCs). These Centers – like the SBDC in my district at the College of Lake County – serve as excellent on-the-ground resources for constituents hoping to launch their small business. They provide training and counseling, and connect entrepreneurs with much needed capital and expertise.

SBDCs also help current small business owners connect with trade experts so they can market their products and services abroad. Small businesses face particular obstacles exporting their products because they lack significant resources to devote to regulatory compliance and research on accessing foreign markets. SBDCs help close this gap by providing export counseling and trade research. With the help of SBDCs, small businesses tap into new markets around the globe.

The SBA is a vital resource to many in my community. Chairman Graves, Ranking Member Quigley, members of the committee - thank you for your consideration of these requests.

THURSDAY, APRIL 26, 2018.

SECURITIES AND EXCHANGE COMMISSION

WITNESS

HON. JAY CLAYTON, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. GRAVES. Well, good morning. We will call the subcommittee to order, and we welcome the Securities and Exchange Commission Chairman Jay Clayton with us this morning. Thanks for joining us and giving us your testimony this morning. I know this is your first appearance before this subcommittee, so we will look forward to spending some time with you.

Before we discuss the proposed budget request that you submitted, I just want you to know a couple of things: that this has been an exciting time for our economy, as we have watched over the last year and working with the administration and with you.

Congress has enacted the historic tax regulatory reform measures that we have seen over this past year, which have freed up businesses to grow and to thrive once again. And we have seen the results have been in the numbers.

It has been clear: unemployment is at a 17-year low, 2.5 million new jobs have been created just in the last 13 months. Wages are growing at nearly 3 percent, which is one of the fastest growth rates that we have seen in a decade. Small business optimism is at an all-time high. And from your perch you see that the stock market has reacted positively as well.

So, in other words, it is a new day for American workers, and we are really excited right now to see what is happening throughout the economy.

But we recognize there are still some challenges in the modern economy, such as new products in the financial technology sector, growing concerns about cybersecurity, and the ever-present challenge of keeping the markets open but also fair for everyone.

So, I want to applaud you, Chairman Clayton, for your focus on the long-term interests of main street investors, as well as your commitment to reducing roadblocks for small businesses, as they face so many across our country.

But you are helping them to secure capital that they need to hire, invest, innovate, and deliver economic opportunities for all our constituents. So, I was encouraged to see that the SEC voted on April 18th to propose a new regulation, what you refer to as the regulation best interest standard.

We look forward to hearing about that this morning. I know you want to address that and share with us your direction, which is being designed to better protect the financial interest of our retail customers all across the country.

So, as you begin this 90-day public comment period, I look forward to hearing more this morning and then, obviously, as you follow up with us in the future, about how this is going to positively impact our constituents across the country.

But we are excited to have you today, and once again we welcome you, and I am joined by the ranking member here, Mr. Quigley from Illinois, who is a great member of this committee and has great interests as well in the topic of the day.

So, Mr. Quigley, it is yours for any opening comments you might have.

Mr. QUIGLEY. Very good. Thank you, Mr. Chairman. Thank you for holding this hearing. I would like to join you in welcoming SEC Chairman Jay Clayton for his first appearance before this subcommittee.

Chairman Clayton, I want to thank you for taking time to be here today. I am pleased to have the opportunity to discuss with you the SEC's first fiscal year 2019 budget with you. You and I have had the chance to meet in my office on a couple of previous occasions, which I appreciate.

The SEC is responsible for promoting investor protection and education, as well as for overseeing the integrity and fairness of capital markets. These responsibilities are essential so that businesses have access to capital, so they can grow, add jobs, and continue to the Nation's economic strength.

The Commission's budget request for fiscal year 2019 is just under \$1.7 billion, including \$37 million to finance a new lease procurement for the New York regional office. This amount represents a negligible increase to base funding of just \$6 million above the enacted fiscal year 2018 spending.

While I am glad to see that the budget proposes retaining additional spending that Congress provided last year to fortify the Commission's cybersecurity infrastructure, I was disappointed that your request does not seek to bolster resources for enforcement staff to a level I believe is needed.

After all, the core of the SEC's work is enforcement and examination. This is where predatory actors, big and small, are caught and punished. Your budget provides for an overall staffing level that is 1 percent lower than the current year and a steeper 3.5 percent decline in FTP, which we compared to 2017.

I am pleased that the request begins to restore positions that were lost during the hiring freeze, roughly one quarter one, I believe, but frankly, your proposal will still leave the enforcement division with dozens fewer staff than when the hiring freeze began. Not only do I consider imperative that you add enough people to accomplish your mission, but I think we also share a focused determination to arm you with the resources necessary to prevent criminals from deceiving investors trading on inside information and undermining competence in our markets. I look forward to hearing your testimony and discussing these and other issues with you today. Thank you again, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley. Mr. Chairman, the subcommittee, this morning you will see members come and go. This an accelerated appropriations process now, so a lot of committee

meetings are being assembled simultaneously, and I know you understand that.

So, you will see members come and go throughout the morning, but there is great interest in what you are doing at the Commission. And, with that, we look forward to any opening remarks you may have before we ask you a few questions.

Mr. CLAYTON. Thank you. Thank you, Chairman Graves. Thank you, Ranking Member Quigley. Members of the committee, I appreciate the opportunity to testify before you today about the President's fiscal year 2019 budget request for the SEC. On behalf of my fellow Commissioners and the 4,500 women and men at the SEC, I would like to thank this Committee for its support.

Congress' recent funding for the agency will enable the SEC to make significant investments in furtherance of our efforts to modernize our information technology infrastructure and improve our cybersecurity risk profile. I recognize the vote of confidence that you have shown in the SEC, as does our staff.

I am committed to ensuring that the agency is a prudent steward of this appropriation. In my interactions with our staff, it is always clear that they recognize and are motivated by the fact that tens of millions of Americans are invested in our securities markets. The touchstone for the SEC staff is the long-term interests of these Americans.

In turn, we believe serving these interests furthers America's interests. Our fiscal year 2019 request of \$1.658 billion for SEC operations will enable the SEC to continue its work in a number of areas with a focus on five important components that I will highlight in a moment.

A few threshold matters; first, the request will enable us to start lifting our hiring freeze and support 100 new hires to address current priority areas.

Second, the budget request relies on the SEC having continued access to the Commission's Reserve Fund to invest in information technology improvements, including those related to cybersecurity.

And, third, importantly, the SEC's funding is deficit-neutral, and any amount appropriated to the agency will be graphic by transaction fees. Let me go through a few areas: information technology and cybersecurity.

With regard to information technology and cybersecurity, Congress has enacted the fiscal year 2018 appropriation, and our fiscal year 2019 request will allow the SEC to make investments to modernize our information technology infrastructure and improve our cybersecurity risk profile.

We will use this funding to advance the implementation of our multi-year IT strategic roadmap, including investments in cybersecurity resources and the agency's risk management capabilities.

Capital formation: In facilitating capital formation, we have made progress, but I believe the SEC can and should do more to enhance capital formation in our public and private capital markets, and particularly for mid-sized, small, and emerging companies.

Please be assured that, as we develop initiatives aimed at promoting access to the capital markets, we will also seek to maintain and enhance important investor protections. The request also will

provide resources for staffing the office of the Advocate for Small Business Capital Formation. Turning to protecting Main Street investors; protecting Main Street investors and preserving their access to investments and opportunities is at the heart of the work of numerous offices and divisions at the SEC.

Last week, the Commission voted to issue for public comment a comprehensive package designed to address retail investor confusion and potential harm in their relationship with investment professionals. Our rulemaking package will significantly enhance retail investor protection while preserving access, in terms of both availability and cost, to a variety of types of investment services and investment products.

Our rulemaking is designed to serve our Main Street investors, and I hope that we will hear from them during the comment process, including in the investor roundtables I announced in Atlanta, Denver, Houston, and Miami.

Enforcement, Compliance, and Examinations: over 50 percent of our workforce is devoted to enforcement, compliance, and inspections, and our 11 regional offices are primarily devoted to these areas. Our Enforcement division is committed to protecting our markets and investors, especially from fraud that impacts our most vulnerable.

Our request will allow for critical investments in our ability to protect investors by supporting key enforcement priorities, including expanding the work of our new Cyber Unit and our Retail Strategy Task Force.

The request will also allow for further advances in our examinations of market participants, including investment advisers. We increased our examination of investment advisers by more than 40 percent in fiscal year 2017 to cover approximately 15 percent of all SEC-registered investment advisers. But we are continuing to seek improvements, including through the use of technology.

Trading and Markets: our trading markets constantly evolve and expand, demanding continuous effort to identify emerging issues and risks, and strive to ensure that, as technology changes, our regulations drive efficiency, integrity, and resilience.

Our request will allow our Division of Trading and Markets to expand the agency's depth of experience in vital areas such as equity and fixed-income market structure, analysis of clearing agencies, broker-dealers, cybersecurity, and electronic trading.

Leasing: Finally, our request supports our participation in the GSA's competitive procurement process for a success or lease for our New York Regional Office. As with the SEC's headquarters lease, none of these funds will be used for SEC operations, and the agency has proposed a mechanism whereby any unused portion of these funds would be returned to fee payers.

In closing, I would like to again thank this Committee for its continued support of the SEC, its mission, and its people, and I look forward to answering your questions.

[The prepared statement of Mr. Clayton follows:]

Mr. GRAVES. Thank you, Chairman. I know I will have a couple of questions, and I am sure the other members will as well. And you will find this is a very thoughtful subcommittee. They have great questions, and we look forward to hearing your responses.

The first, from me, is, just going back to something you indicated, which was one of your items for your long-term agenda, and that was reviewing shareholder engagement in the proxy process.

In fact, in November, you made the comment that the SEC (or the Commission) should be lifting the hood and taking a hard look at whether the needs of shareholders and companies are being met. And so, I appreciate your willingness to do that, because we have heard from several companies regarding this process, relating to the proxy advisory firms and their concerns regarding those.

So, can you update our committee regarding when the Commission will be taking an important first step to address this issue and others like that, and reopening the comment file on the 2010 proxy plumbing?

Mr. CLAYTON. Great, great. The proxy area is an area in need of examination, and it is an area in need of at least some modernization. You will not see it on my short-term agenda, but that does not mean we are not thinking about it. It is on our long-term agenda, and some of the things you mention in your question are important. The landscape of corporate governance has actually changed significantly in the last 5 to 10 years. We have a greater concentration of shareholder holdings, we have greater access to the proxy from shareholders, we have the emergence of proxy advisory firms which have a great deal of influence in the voting process. Those are all things we should examine.

With respect to Proxy plumbing, we have had some recent matters that have demonstrated what we all believe, and that is that our plumbing is out of date. I think, if you looked at some of the recent proxy contests and the amount of time that it took to resolve them, you would have to reach the same conclusion. So, broadly to your question, I am aware of the issues, we are looking at them, and I would say stay tuned for action.

Mr. GRAVES. The difference in short-term, long-term agenda timeframes?

Mr. CLAYTON. Well, the way the law works on our agenda, we have a short-term agenda, which are the things we think we can get done this year. This is not something that I think I can finish this year. I would say it is a higher priority on my long-term agenda.

Mr. GRAVES. Fair enough, fair enough. And then you reference the comment period and that it is being reopened and discussing what we once knew as a fiduciary rule but now is being re-discussed as the best interest proposal for our constituents.

And so, if you could just give us a little bit of an update on that, and then maybe go into a little bit more depth than you did in your opening comments there about how you see this process playing out, and what kind of pushback you might receive, and what kind of comments related to comments from the past.

How do you see that folding into the future in your plan in the upcoming proposed rule?

Mr. CLAYTON. OK. There is a lot in this area; let me try and get into detail in the time we have. I do not think there is any doubt in anyone's mind that action is required in this area, and action that coordinates across the various agencies that regulate the relationship between an investment professional and their client,

whether that investment professional is an investment adviser or a broker-dealer. We have the Department of Labor, we have state securities regulators, we have the SEC, we have FINRA, we have state insurance regulators, we have banking regulators, all in this space.

I think we all also agree that the duty, whether it is an investment adviser or a broker-dealer, owed to a client, should match that client's expectations. I think we all also agree that the client ought to be able to understand that duty and the type of relationship.

I think we all also agree that that relationship should be governed by fiduciary principles. Now, we have called it the best interest standard, but I want to be clear. For broker-dealers, there are core fiduciary principles embodied in that best interest standard. In fact, those fiduciary principles are, I believe, the same as the fiduciary principles that are embodied in the investment adviser standard.

So, what have we done? We have recognized that the relationship between an investment adviser and their client is a different type of relationship than a broker-dealer and their client. But we have sought to harmonize the actual duties that are owed, recognizing those differences. And I look forward to engagement with all groups as we proceed across the rulemaking.

Mr. GRAVES. Well, thank you for taking time to examine this. I know this has been an area of interest for a lot of individuals or broker-dealers or whomever they might be. And then what I heard is, you are incorporating some round tables as well to get community input and investor input and, I guess, industry input. And that is really important in this process, so we appreciate your transparency and work in this area and continue to move this in the right direction.

Mr. QUIGLEY. Thank you. May I make one more comment about this area? Do you mind?

Mr. GRAVES. Yes, sir.

Mr. QUIGLEY. One of the lucky things about this job is, I get to interact with regulators around the world. We should never forget that the breadth and scope of participation in our markets by the American public is the envy of the world, and we should do everything we can to preserve that. Any other country would be delighted to have so many individuals investing in their capital markets.

Mr. GRAVES. Thank you. Thank you for that reminder, Mr. Quigley. And then, Mr. Stewart.

Mr. QUIGLEY. Thank you, Mr. Chairman. And, again, Mr. Clayton, I appreciate your being here. And I appreciate your opening remarks. I made public pronouncements, and again today, talking about the importance of enforcement. I talked about 50 percent of your staff being involved in this.

Help me understand some of these issues, though: 2017 saw a decline in both the total number of SEC enforcement and actions and the amount of penalties assessed. Total penalties imposed in 2017 declined from 1.2 billion in 2016 to 832 million, a fall of nearly 35 percent.

But I think, perhaps, more troubling is an outsider's perspective of your enforcement actions today could give the appearance that your agency is going after smaller fish instead of misconduct conducted by bigger fish firms. I understand it is more difficult, more challenging, and any of abusers are people you should be going after.

But I would like you, if you can, to explain what appears to be a change in enforcement strategy. Georgetown University—I am sure you saw this—released a study in November which found that cases brought against entities, as opposed to individuals, had changed quite substantially.

A quote she wrote: "Dropping from 47 percent in the first half of 2017, before you became chair, to 34 percent in the second half of the fiscal year after you took the helm."

The study went on to note that the median fine in settled cases was about 110,000 between 2007 and 2013, but in the most recent fiscal year SEC, which ended September 30th, that number had dropped by more than a third to about \$70,000. These would be troubling to anyone. Can you help us understand these trends?

Mr. CLAYTON. Yes, I can, and let me do this. Let me talk about those trends, and then let me talk about what statistics are appropriate. But accepting those statistics is one that we want to talk about.

There is another statistic that is not in that study and actually bothers me about these comparisons. The gestation period for our cases is 22–24 months. That means the cases that are being reported on in 2017, are, from a median perspective, the ones that were started in 2015. The ones that are reported in 2018 are the ones that started in 2016.

So, those statistics actually reflect, I do not want to say exclusively, but for the majority part, enforcement decisions that were made before I arrived at the Commission.

Mr. QUIGLEY. Decisions in terms of who to go after.

Mr. CLAYTON. Which cases to bring and how to start them, because those statistics are cases that have come for a vote and are being resolved. So, on average, they are just about two years old from when they were started. So, what the Enforcement Division under my leadership has are the cases that started when I got there.

And I will tell you there has been no letup in terms of enforcement. We have, you know, a former Southern District of New York head of the Commodities and Securities Task Force as one of our Co-Directors of Enforcement.

I retained one of the Acting Co-Directors of Enforcement. We have a number of prosecutors who are leading our offices. In Chicago, we have just hired Joel Levin, who was a prosecutor in Chicago, to come over and run our Chicago Regional Office. So, I have no doubt that they are pursuing bad actors.

As far as, you know, specific actions, I am happy that we are pursuing individuals as opposed to entities. I think that individual actions have greater deterrence. And this is based on my experience.

When I talk to people in the private sector, and I caution them to be careful, I do not point to a particular company. I point to an

individual. Twenty years later, people still remember the individual harms, and it has great deterrent effect. They do not remember the company actions.

Now, I am not saying I am not going after companies. Because, you know, if they are wrong; we will. But individual deterrence is very important. And just to give you some anecdotes that we announced two days ago, the Yahoo! action was the first action for failure to disclose a cybersecurity breach, and it was resolved with a significant fine for the former Yahoo.

Mr. QUIGLEY. So, to your knowledge, no one in your agency has been directed as to any sense of priorities? When they are told what to prioritize, is this a uniform analysis? I get that an individual can do a tremendous amount of damage.

Mr. CLAYTON. Let me put this clearly: there are no big fish that should think we are not coming after them if they do things wrong.

Mr. QUIGLEY. My time is up. Thank you, sir.

Mr. GRAVES. Thank you, Mr. Quigley. Mr. Stewart, and then Mr. Bishop.

Mr. STEWART. Chairman and Mr. Chairman, welcome. This is not my area of expertise, but I do have some questions that I think a lot of Americans wonder. And you have experience in this, I believe, in some of your previous statements. And it is even indicated in your bio that we have here. And that is the role of cryptocurrencies. And I know CFTC has indicated that they would like to exert authority over them, and they believe there are more commodities in currency.

Let's speak broadly, if we could. I have got to tell you, one of my sons invested \$17 in a cryptocurrency. He has a greater net worth now than I do, or something like that. So, this has been a great success story for some people. Do you think that the cryptocurrencies provide economic utility?

Let me ask that, and, if you would, elaborate on some of the concerns you have, and then tell us where is the proper regulator, and what is a proper regulating scheme that we should have in these currencies? Because, you know, there are many of them now, and I think sometimes people just do not have the information they need to make good decisions.

Mr. CLAYTON. Well, I agree with your last comment. And it is a complicated area because, as you said, there are different types of crypto-assets. Let me try and divide them into two areas, and I will try to do this fast. A pure medium of exchange; the one that is most often cited is bitcoin. As a replacement for currency, that has been determined by most people to not be a security.

Then there are tokens, which are used to finance projects. I have been on the record saying there are none that I have seen, tokens that are not securities. To the extent that something is a security, we should regulate it as a security. And our securities regulations are disclosure-based, and people should follow those and provide the information that we require.

Mr. STEWART. And let me ask this very quickly. Are they clear in how they present themselves, that they are presenting themselves as a currency or as a token which is a security?

Mr. CLAYTON. No. And this area has grown substantially without the usual respect for the law that you would expect to see in finan-

cial markets. That has happened. I will take this any way you want. I mean, I know our time is short. I can talk about currencies and regulations of currencies, or the security side of it, or try to do both.

Mr. STEWART. OK, so let me rephrase the question very briefly, and we can make this yes or no, because I think the answer is yes. I mean, there are some economic utilities in these tools. Is that true?

Mr. CLAYTON. Undoubtedly. And this technology undoubtedly has great promise.

Mr. STEWART. OK. So, that being the case, where is the proper regulator? In the tokens, it would be for you, true?

Mr. CLAYTON. Yes.

Mr. STEWART. In the currency, it would be just the market?

Mr. CLAYTON. That is a question that I have highlighted as well. To the extent that we do not have jurisdiction, to the extent that it is not a security, we need to look at these currencies because our laws did not anticipate them. Our laws anticipated sovereign-backed currencies. These currencies are not sovereign-backed.

With a sovereign-backed currency, I would argue that the need for regulation to give people comfort is less than it is for something that is not sovereign-backed. For lots of reasons.

Mr. STEWART. Well, I would maybe conclude with this. And that is that many times, when we regulate or when we legislate in a moment of crisis, we overkill.

Mr. CLAYTON. Yes.

Mr. STEWART. Dodd-Frank is a great example of it, in my mind. In the heat of the moment and the emotion, I think we went too far. I would say the Patriot Act, something that is more along my area and background. I would say the same thing. In the emotion of it, we went too far. And I worry a little bit that we have an event, or we have a series of things that draw a lot of concern and then we are not prepared on how to respond to it and we may not have the best answer.

So, I would like us to lean into this, rather than wait for something that gets people's attention and then we draw upon Congress and others to respond to it when we are really not prepared. Is that a legitimate concern?

Mr. CLAYTON. Not only is it a legitimate point, it is what we have been doing at the SEC. In the securities area, we have been leaning in, because I have been concerned about two things. I am concerned about people being taken and our laws not applying. I am also concerned that if we do not do anything, our inevitable reaction will make this technology less than it would have been.

Mr. STEWART. Well, thank you, Chairman. My time is up. I yield back.

Mr. GRAVES. Good questions. Mr. Bishop and Mr. Young.

Mr. BISHOP. Thank you very much. Chairman Clayton, I am very intrigued by the discussion on cryptocurrencies. But I think that is going to be a great drill for us going forward in the future. Let me go back. In the Fiscal Year 2019 Budget Justification and Annual Performance Plan, the Commission observed that nearly 35 percent of all SEC-registered investment advisors have never been examined. And as the population of advisors registered with the SEC

continues to grow, would you please tell us how the Commission plans to fix such a problematic regulatory shortfall?

Mr. CLAYTON. Well, we have shifted. And I want to congratulate our OCIE Division, our inspections and examination division, on shifting to a risk-based prioritization of who we examine and what areas we examine for using data analytics. The statistics you cite, about 35 percent. We are trying to reduce that number.

I will tell you that those are the ones that rank as less risky in our analysis. But, we are making efforts to reduce that number and we are making efforts to increase the number of firms that we examine annually. We went to 15 percent this year, which was up 40 percent over the last couple of years.

Mr. BISHOP. Thank you for that. Now, according to a 2017 GAO report, minorities account for only 20 percent of management positions in the financial industry. This is in contrast to a general minority population of 40.9 percent. What efforts has the SEC taken to help improve this drastic disparity? And what steps would you think would be appropriate for Congress to take to provide you with the tools to increase minority participation?

Mr. CLAYTON. Well, my view on this is that efforts around diversity and inclusion begin at home. And I am committed to it at the SEC. I meet with our OMWI office, the Office of Minority, Women, and Inclusion, on a regular basis and this is a focus for me. In terms of what Congress should do, I do not know if it is my place.

Mr. BISHOP. What tools would you need, if any, that we, in the legislative branch, could help you to accomplish that?

Mr. CLAYTON. I do not know that that is the role for the SEC, in terms of social policy. But, as I said, at the SEC, this is a priority for me. As far as how we deal with our public companies in that regard, I am all for disclosure, all for disclosure of material information.

As far as micromanaging from the SEC, how people handle human capital, that is beyond our current role. I would like to see, and I have been clear on this, I would like to see more disclosure from public companies on how they think about human capital. If you do not mind, can I explain?

Mr. BISHOP. Yes, but you can also indicate to me what your level of inclusion is, in terms of your diversity representation, minority representation, at the SEC itself.

Mr. CLAYTON. At the SEC? We do an annual report on this. And we are doing well throughout the agency. We can do better in leadership.

Mr. BISHOP. OK.

Mr. CLAYTON. To your statistics, we roughly match the U.S. population.

Mr. BISHOP. Forty percent?

Mr. CLAYTON. I mean, is it exact? I do not have the exact numbers in front of me. I can get back to you. But, we do not match the U.S. population in leadership at the SEC. And it is a priority for me to address that over time.

Mr. BISHOP. Thank you.

Mr. CLAYTON. Thank you.

Mr. GRAVES. Mr. Bishop. The gentleman from Iowa, Mr. Young is recognized. Then, Mr. Cartwright.

Mr. YOUNG. Thank you, Mr. Chairman. Welcome. The cryptocurrency issue is fascinating to a lot of people, kind of, watching what is going on. Would you invest in cryptocurrencies?

Mr. CLAYTON. Well, let me say this.

Mr. YOUNG. That is not a fair question, I realize.

Mr. CLAYTON. One of the unlucky and lucky things about this job is, I am not allowed to make investment decisions anymore.

Mr. YOUNG. That is the answer we were looking for, was it not? So, you know, when my counterpart, Mr. Stewart, was talking about, you know, leaning in on this or waiting for some kind of crisis to happen and Congress jumps in on this and tries to solve a problem, which we would probably come back in five years and try to readdress, what are your counterparts doing in other countries to address this from a regulatory standpoint?

Mr. CLAYTON. So, this is a developing issue. What are other regulators doing to respond to this? If you asked me this question 6, 9 months ago, the range of what people are doing or not doing, I think, would have been pretty broad. It is narrowing. In the currency space, is it a substitute for the dollar? The yen? The euro?

What I have seen is further skepticism around the world as to whether the cryptocurrencies will, in fact, be a substitute for our traditional sovereign currencies, including whether governments will allow cryptocurrencies to be integrated into their financial systems. Because our financial systems do not only work as mediums of exchange and lending; they do a lot of other work, including anti money laundering, preventing terrorist financing, you know, those types of things. Also, they allow us to affect monetary policy. Governments serve, I would say, they hold those rightfully. They hold those functions pretty dear. I think around the world, people are realizing that they would not want to give up those functions.

Mr. YOUNG. Well, we will be watching. I know you will be watching closely as well. The SEC has yet to finalize all of its title 7 rules for security-based swap dealers, unlike the CFTC, which has had their registration regime effectively in place for about five years, I think, maybe over.

This lack of finalization has led to some uncertainty in the markets and I wonder if you have a timeline for where this going? And are you watching what the CFTC has done in trying to get rid of some of these duplicative regulatory requirements?

Mr. CLAYTON. Yeah. So, do I have a specific timeline that would, you know, be precise enough to discuss? No. Do I have an initiative? Yes. I am very happy that Commissioner Peirce, who joined us recently, has agreed to oversee our efforts to move forward with Title VII rulemaking in, what I am going to say is, in coordination and, where possible, harmonization with the CFTC. What we regulate and they regulate overlaps a great deal, but not perfectly. And she is working on overseeing that work at the SEC. We have had several bilateral meetings, and I expect to see progress in this area.

Mr. YOUNG. In your SEC budget request for fiscal year 2019, there is a strong emphasis on cybersecurity. Is this being done from a reactionary standpoint? Or from a proactive standpoint?

Tell me about what is happening in terms of hacking and what you are experiencing. And have there been some compromises? And to what level? And I worry about what this effect could have on a

lot of different things, as well as just identify theft and fraud and manipulating, ultimately, possibly, the markets.

Mr. CLAYTON. Well, there is a lot there. I will talk internally at the SEC, to start, both reactionary and proactive. When I arrived, I initiated a review of where we stand, from a cybersecurity posture. Shortly thereafter, we discovered that we had had a prior breach. We have been addressing the breach of our EDGAR system.

Let me say we are addressing that specific issue, but then we are looking more broadly across the SEC, in terms of what are our vulnerabilities, either addressing them, reducing them, or both. And when I say reducing, it goes to one of the points you made, which is personally-identifiable information. We have done a review of the personally-identifiable information we take in and we have actually reduced that.

We just had a rulemaking the other day that had the support of all my Commissioners, and I appreciate their support in this area; eliminating PII from our forms where it was not necessary.

Mr. YOUNG. Thank you for being proactive on that, with that rulemaking. I would be interested in learning more about that. So, thank you for your leadership on that because this is real. And we know it is real. And thank you for what you do. I yield.

Mr. GRAVES. OK, Mr. Young, Mr. Cartwright, and then Mr. Yoder.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. And Chairman Clayton, thank you for being here. I know you spent a considerable amount of time around Philadelphia, and I hope you are an Eagles fan?

Mr. CLAYTON. Absolutely.

Mr. CARTWRIGHT. Good, good. I am going to be much nicer to you now. Chairman, I want to talk about protecting investors. That is what SEC is all about. And I want to talk particularly about protecting them when it comes to disclosure of climate change risk. I am concerned about SEC's continued lack of enforcement of its own 2010 guidance on climate disclosure. Investors want and need disclosures of climate risk, but all too often they are generic or entirely lacking. Full and complete disclosure is going to help investors allocate capital efficiently and put pressure on corporations better to manage climate risks.

Now, I know you share this concern. You repeatedly stressed the importance of disclosing climate risks when you were at Sullivan and Cromwell. And also, while you were representing Crude Carriers Corporation, you made sure they included a very detailed discussion of climate risks in their IPO.

When the 2010 guidance was released, the SEC issued around 50 comment letters to companies that had provided insufficient disclosure of climate risk, but it is been years at the SEC since they have issued a single letter. In reviewing the disclosures, I can tell you that the answer is not that suddenly every company is adequately disclosing climate change risk.

So, the question is, how can you explain a near-complete lack of evidence of any enforcement of the 2010 guidance? What evidence can you provide that you are taking climate risk disclosure seriously at the SEC right now?

Mr. CLAYTON. Thank you for noting my prior work. We take all of our disclosure mandates seriously. We firmly believe that investors need to have the information required to make an investment decision. I think, if I may, the discussion around climate risk disclosure misses some of that point. A disclosure should be to your investors and what climate-related issues might affect your company.

Mr. CARTWRIGHT. Right.

Mr. CLAYTON. And companies should think long and hard about that. And that is not a uniform issue. There are many industries for which it is not a material risk at all, and there are industries for which it is clearly a material risk. But it is a risk that depends on many factors outside of the control of the company itself, including regulatory actions around the world, developments, and what not.

You know, I am not disagreeing with you. I agree with you that this is something that companies and industries need to think long and hard about and how to communicate with their shareholders. But, I do not think you should take the lack of an enforcement actions as somehow indifference from the SEC in this area.

Mr. CARTWRIGHT. It is inaction, though. It is not following up on the 2010 guidance.

Mr. CLAYTON. Let me be clear. If there are cases where companies have had adverse effects on their shareholders as a result of climate matters and they have not disclosed them, and they knew about them, we should be investigating those.

Mr. CARTWRIGHT. Well, let me talk about the Peabody Energy case. New York Attorney General investigated Peabody Energy in 2015 because of their lack of candor in disclosing the risk of climate change. When Peabody came to a settlement with the New York Attorney General, Peabody then had to revise their SEC disclosures. Peabody admitted that concerns about the environmental impact of coal combustion could significantly affect demand for our products or our securities.

So, this was something that the SEC disclosure process should have caught. The SEC remained silent as the New York AG took the lead, took the point, on that issue, investigating Peabody's false disclosures. SEC disclosure process needs to serve its intended purpose. When a company like Peabody makes misleading disclosures, it is disconcerting that SEC is taking a backseat to a State Attorney General.

Do you feel like the SEC failed, proactively, to address this disclosure problem by Peabody?

Mr. CLAYTON. I am not going to comment on a specific case, that would be inappropriate. But let me say this, Mr. Cartwright. Let me be absolutely clear on this; I want to partner with our state Attorneys General on enforcing our securities laws. But, one thing I am concerned about is having different disclosure standards at the state level and at the Federal level, whether de facto or generally. Let me leave it at that.

Mr. CARTWRIGHT. Well, let me follow up with this last question. SEC lacks subpoena power. Companies disclose material risks to their investors in order to comply with the Federal securities laws. But, even if the SEC suspects that a company is not fully com-

plying, the corporate finance division at SEC does not have the authority to subpoena additional information from companies. That is correct, is not it?

Mr. CLAYTON. And I think it is good governance. The Corporation Finance Division, if they see something they do not like, they can refer it to the Enforcement Division, who will make a judgment as to whether to pursue it or not.

Mr. CARTWRIGHT. Would not corporate finance be more effective if it could subpoena information from companies it suspects of withholding or misstating material information in their disclosures?

Mr. CLAYTON. I do not believe so. I do not believe so. I think it is appropriate to have those functions, the enforcement function, and the corporation finance function separate.

Mr. CARTWRIGHT. That is all I have. I yield back, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Cartwright. Mr. Yoder and then Mr. Moolenaar.

Mr. YODER. Thank you, Mr. Chairman. Chairman Clayton, welcome to the committee. I appreciate your testimony this morning. As you know, liquidity is very constrained in some financial markets. And that constraint of liquidity affects our constituents who rely on retirement income, drives up the cost of their investment, does not provide them any sort of net benefit, but makes their investments less valuable.

One regulation that is contributing to this constraint is that the Federal Reserve requires that banks clearing trades of liquidity providers to the market use the current exposure method, known as SEM.

The Fed has acknowledged that SEM is insensitive to risk and it undervalues netting benefits and has stated that it plans to move away from SEM. However, the Fed plans to do this through rule-making, a process that could take years. As a regulator of markets, what impacts do you see stemming from constrained liquidity, and what could the longer-term consequences be if this problem is not fixed?

Mr. CLAYTON. Yeah. Liquidity is one of those difficult concepts to get your arms around because it only becomes really important when you do not have it and you need it; when you want to sell and there is no buyer. Let me say this. I am very happy with the coordination that has been present across the Federal financial regulators. I speak regularly with Randy Quarles and Jay Powell, Chris Giancarlo, and Secretary Mnuchin's people at the Treasury about these types of issues.

And I am concerned about liquidity and whether we have sufficient liquidity, particularly in our fixed income markets. And I recognize, and we all recognize, that we are moving into a different monetary policy situation and that moving in that area, we need to be very cognizant of liquidity.

Mr. YODER. And I appreciate your leadership in that regard. As it relates to SEM, the Fed has acknowledged that it is insensitive to risk and it undervalues netting benefits, and it plans to move away from it. I think the challenge we see is that their intention to do that is going to take a number of years. And in the meantime, it tightens liquidity in markets.

And so, if there are ways to get the Fed to accelerate that timeline to fix this, that would seem to be good for our constituents, good for investors, good for the markets.

Mr. CLAYTON. Yeah. I do not want to get ahead of my brethren or comment on that. I will say that we are all focused on making sure there is sufficient or increasing liquidity without adding risk. That is really the mindset we have to have as we go forward.

Mr. YODER. All right. Well, I want to put the SEM, this issue, on your radar. I also want to ask you about the business development companies. They play a vital role in helping small businesses access badly needed capital. And these companies were created by Congress with bipartisan support. They play an important role as an alternative to conventional financing.

But, in 2006, the SEC finalized its Acquired Fund Fees and Expenses rule, the AFFE rule, which required that a fund investing in other funds disclose its share of the acquired fund's expenses as a separate line item. Many believe this rule is incorrectly applied to BDCs and as a result, mutual funds and other types of funds overstate their expenses when they invest in BDCs.

And, unlike other investments that a fund may purchase, a BDC's market price already reflects its expenses. Therefore, many believe the AFFE rule leads to double-counting of a BDC's expenses. When the SEC finalized the rule in 2006, it stated the regulation would benefit investors, not have an adverse impact on capital formation.

Are you concerned that the AFFE rule has undermined the SEC's stated goals of benefiting investors and fostering capital formation, through its treatment of BDCs?

Mr. CLAYTON. I am aware of this issue and the good points made on either side. The point about potential double-counting and whether the economics are all baked in or not is a good point. The point on the other side, that if you do not reference this issue, people are not aware of it, is also a good point. We are looking at it. I think—and we will look at it in connection with our obligation to promulgate rules in the BDC area for leverage as a result of what is going on.

Mr. YODER. I think getting your full consideration makes sense. You know, when the rule was finalized in 2006, there were only 11 BDCs in existence. They have grown significantly since then, with around 90 operating today. And, you know, REETs are very similar to BDCs, but they are exempted from the AFFE rule. So, I hope you will give it your consideration to take those factors into account and have the SEC review the rule and see if still applies properly today.

Mr. CLAYTON. We will. We also recognize the growth in this industry. And I recognize that it is an industry that enables retail investors to have access to developing companies. And that is important to me.

Mr. YODER. OK. Thank you, Mr. Chairman.

Mr. GRAVES. OK, Mr. Yoder. Mr. Moolenaar and then Ms. Herrera Beutler.

Mr. MOOLENAAR. Thank you, Mr. Chairman, and welcome, Chairman Clayton. Appreciate you being here. I wanted to talk with you a little bit about cybersecurity, and I know that is an

issue you have already talked a little bit about. But, I wanted to get your thoughts on, sort of, the role of the SEC, what you are doing there.

But also, in the past, you have authored, or coauthored, some articles on cybersecurity and calling on Congress and the President to develop kind of a 9/11-type commission on cybersecurity and the threat. And I just wondered if you could give us your assessment on, kind of, where things stand, relative overall on the topic, as well as what you are doing at the SEC.

Mr. CLAYTON. So, I talked a bit before about what we are doing at the SEC and our efforts to uplift our protection but also reduce our risk area. And we intend to continue to do that. Outward looking, we look at registrants. All public companies and their cybersecurity disclosure. And I referenced the recent action involving Yahoo.

What I have not discussed and probably should, is oversight of what I will call market utilities, the nodes in our financial system that are very critical. One of our jobs is to inspect those entities. And including inspecting them for their ability to deal with cyber threats and cyber risks. And to your point on Federal coordination, we coordinate with other Federal regulators who either also oversee those nodes in the system, or other nodes that are important to our system. And I am happy that as a result of a directive from the White House, that coordination has gotten traction, particularly around these nodes in our financial system. So, do I feel great? No. I am supposed to worry. But I feel good that we are making progress in that area.

Mr. MOOLENAAR. No, that was my question. Obviously, we are never totally secure, but you feel like progress is being made and that is encouraging to hear. I did a little research on your background. I noticed you were born in Newport News and spent time in Philadelphia and were a captain of a basketball team. And it kind of reminded me of the Allen Iverson trajectory. Have there been a lot of parallels made between your basketball and Allen Iverson's?

Mr. CLAYTON. I do not like to practice either.

Mr. MOOLENAAR. Thank you for that. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Moolenaar. Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman. And thank you, Chairman Clayton for being here today. Now, I understand your office has been reviewing the rules governing broker-dealers and advisors under the 1940s Advisors Act. And, in fact, I think it was last week, or not too long ago, your office solicited public comment on a proposal to modify the standard of care that both must provide their clients.

And I agree. We need consistent principles and, given the differences in the business models, I was actually very happy to see that you addressed the two groups with a more tailored approach instead of a merged, one-size-fits-all solution.

As you continue to review the various rules and possibly even the idea of arbitration, agreements between the investment advisors and their customers under Section 921 of the Dodd-Frank Act, do you intend to continue to take a tailored approach with these two groups?

Mr. CLAYTON. The short answer is yes.

Ms. HERRERA BEUTLER. Great. Because I have another question.

Mr. CLAYTON. OK.

Ms. HERRERA BEUTLER. Unless you care to expand?

Mr. CLAYTON. No. I appreciate your recognizing that what we tried to do was take the investment adviser model, which is generally a fee-based, portfolio-based, over time model and make sure the principles that we all care about are there, and then, the broker-dealer model, which is a transaction-based, episodic model, and apply the same principles there. And that is what we are trying to do, to match what an investor would expect.

When an investor sits across the table from their financial advisor or their broker-dealer, what they would expect them to do. And as we go through the comment process, if people want to appeal to us at the SEC, I think that is the way they should look at it. What would I expect from my investment professional? How would I expect them to behave? And our standards should match that.

Ms. HERRERA BEUTLER. Good. Thank you. Second question; the SEC's recent fiduciary standard proposal provided guidance that the broker-dealer representatives and other financial services participants should not use the name adviser. And I agree that there is a difference between the various categories. And clarifying how they refer to themselves is going to help relieve customer confusion.

Are you planning to provide guidance as to what these groups should call themselves to help customers who may be confused by new names that these groups may create?

Mr. CLAYTON. This is something I want to hear comment on very much. One area of clear confusion is, am I dealing with a broker or am I dealing with an investment adviser? We want to clarify that. The title proposal is just one part of that.

The relationship summary that would need to be provided to retail investors is another part of that. But if people have better ideas on how we can make that clear, make it clear from the outset, I am all ears.

Ms. HERRERA-BEUTLER. Great. That is what I needed to know. I yield back. Thank you.

Mr. GRAVES. Thank you, Ms. Herrera-Beutler. Mr. Chairman, if you have a few more minutes with us I know I have a couple more questions, and members may as well. I want to just get back to cybersecurity for a minute because we made it a priority in the 2018 fiscal year spending bill that we passed, and the President signed recently, \$45 million, I know we provided you. Do you anticipate you will need additional funds moving into 2019? Or is that sufficient to take care of some of the challenges you face?

Mr. CLAYTON. Well, I want to say thank you because that money, what it enabled us to do was take what we had on tap for 2019 and move it into 2018. And our 2019 request, serendipitously, asked for an additional \$45 million for cybersecurity over 2017.

So, basically, what you have done is enabled us to move forward what we were planning to do. So, to your question, I think we are on our way to meet our strategic plan a little sooner. In the area of cybersecurity, you could always spend more money, and things can always come up. So, I do not want to ever say I am good, but we are satisfied where we are.

Mr. GRAVES. Well, I am glad to hear that you were able to bring things forward. That means you are accelerating some of the protections as well. I mean, we can see that.

Mr. CLAYTON. Yes. To be clear, some of the protections, but also some of the things we are doing to add efficiencies, including in enforcement and whatnot.

Mr. GRAVES. We have had conversations in the past about the Reserve Fund at the SEC, and we know that you have received substantial funding from 2018, but it looks like it is still drawing down from the Reserve Fund. Why is that, and what are those funds being used for?

Mr. CLAYTON. Let's see if I have, I do have the specifics on what we use the Reserve Fund for. The majority of it is overall business process improvements; long-term upgrading of some of our legacy systems, and that includes our EDGAR system. So, that is the majority of it, and those are longer-term projects, which is what the Reserve Fund was intended for. So, basically, projects that go out over several years.

Mr. GRAVES. Do you anticipate the unused balance of the reserve fund will be part of any rescission package coming from the administration?

Mr. CLAYTON. I do not know.

Mr. GRAVES. OK.

Mr. CLAYTON. Let me put it this way.

Mr. GRAVES. We will probably know soon, I guess.

Mr. CLAYTON. I will know soon, and if it is, I will be scrambling a bit, because we need the money.

Mr. GRAVES. Well, we will keep that in mind as we are formulating the bill here in the next couple of weeks. And then, back to the cybersecurity side of it, we are investing a lot. You are making a lot of changes. You have private sector experience. In your opinion, do you feel like the SEC is now secure? I know you had questions about it when you first came in. I mean, can you reassure us in the investment community, and our investors, and our constituents?

Mr. CLAYTON. Anybody who would sit here and would say, "I am 100 percent sure that we are 100 percent secure," you should look at very skeptically. We are subject to attempted penetrations, scans—

Mr. GRAVES. Every day, I imagine.

Mr. CLAYTON. Every day, as are others. Do I feel like we are more cognizant today of the risks and that we are trying to address them? Yes, I do. And we have brought in third parties to do penetration testing and those types of things. But it is a constant battle.

Mr. GRAVES. Yeah, that is a fair assessment. And I think we all respect and understand that as much as anyone tries to secure and protect systems, agencies, personal identities, there are those out there that are trying to break in, bust, and use new technologies. So, to stay advanced, we are going to continue investing.

We expect you to use it wisely, as you have been, and appreciate you doing that. And then, one last question—and Mr. Quigley may have some follow up—the Wells Fargo enforcement that we read about, can you give us an understanding of how much was the enforcement action against Wells Fargo, and where do those funds

go? How are they utilized? Do they go to restore those that might have been injured, or do they go to SEC, or do they go to Treasury? How are those funds allocated?

Mr. CLAYTON. I will talk generally. I do not want to talk about a specific situation. I will talk generally about what happens when we either issue a fine or seek restitution. We are focused on getting money back to investors. That is our primary focus if somebody has been wronged. In terms of a fine that goes beyond compensating investors to the extent we can, that goes to the Treasury.

Mr. GRAVES. Just goes to the Treasury, in general?

Mr. CLAYTON. Yeah.

Mr. GRAVES. All right.

Mr. CLAYTON. That is speaking generally. But that is how we look at it.

Mr. GRAVES. Thank you, Mr. Chairman. Mr. Quigley.

Mr. QUIGLEY. Thank you again, Mr. Chairman and Mr. Chairman. You reference, following up on the chairman's question—the chairman to my left—the rescission, the Reserve Fund. This is financed by the registration fees, right? So, if used in a rescission, we are really not sending money back to the Treasury. We are just not using money that is set aside by registration fees, correct?

Mr. CLAYTON. For all intents and purposes, our entire budget is deficit neutral.

Mr. QUIGLEY. So, I am just publicly questioning why, if you do a rescission, it is to send money back to the Treasury. But this is money coming from a different direction. So, I am just making a point. You talked about how the Reserve Fund is used. Generally, it can be used in what you are doing and using it for. It helps you deal with cybersecurity threats, correct?

Mr. CLAYTON. Correct.

Mr. QUIGLEY. And you talked about the fact that if this is diminished, I think the word you used was maybe scrambling.

Mr. CLAYTON. Right.

Mr. QUIGLEY. Right. You are more vulnerable.

Mr. CLAYTON. I like the amount that we have allocated for tech dollars going forward, to the extent it was reduced. I might take away from other things to get it back to where it was because—

Mr. QUIGLEY. Sure.

Mr. CLAYTON [continuing]. I think we have sharpened our pencils on where we should be spending tech dollars. And if I lost a fair amount of them, I would want to try and find a way to replace them.

Mr. QUIGLEY. Sharpening pencils is great. I am concerned that the administration's budget for 2019 proposes a partial rescission already for the IT Reserve Fund for the upcoming year and a complete termination of it for the year 2020. Your thoughts?

Mr. CLAYTON. Well, look, I think I have said before. Whether the money comes from the Reserve Fund or it comes from some other area, I am somewhat agnostic. I do need an ability to plan for the long term. But the total amount, including the Reserve Fund that we have asked for, we—

Mr. QUIGLEY. You need the money.

Mr. CLAYTON. Need the money.

Mr. QUIGLEY. Thank you. Let me just ask about subpoena authority. Following the SEC's failure to catch Bernie Madoff, Chairman Shapiro made the decision to delegate subpoena authority so that senior enforcement staff could initiate investigation.

Mary Jo White inherited and retained this authority. Your predecessor, Commissioner Piwowar—I have always pronounced this wrong—revoked this authority in February of 2017 during his brief tenure as you were going through your Senate confirmation, I believe, restoring the requirement that subpoenas only be issued by one of the Enforcement Division's Co-Directors. Your thoughts on reversing that decision?

Mr. CLAYTON. Let me give you the history.

Mr. QUIGLEY. Sure.

Mr. CLAYTON. It used to be a Commission decision to issue a subpoena. It went down to the heads of Enforcement, and as you noted, out to the regional directors. When I got there, it was at the Co-Director level. I analyzed this and said, "Are we in any way, by keeping it at the Co-Director level, inhibiting our ability to investigate?"

Mr. QUIGLEY. If you put these people in place, as you talked about, with Mr. Cohen go in there and trust in these people and delegating and having more people with this ability?

Mr. CLAYTON. I do not know of an instance where someone from a region called up and said, "I would like a formal order of authority" but it has not been granted. I mean, maybe there have been, but I have never heard of one. What it does is it enables our Co-Directors of Enforcement to know what everybody in the region is doing, and I think, enhances coordination.

So, my question I have asked them, and like your question, is a good one. Have we enhanced coordination without in any way impeding people's ability to get a subpoena when they need one? And the answer is yes.

Mr. QUIGLEY. In an environment like this, though, taking away that authority, does it not send a message to them?

Mr. CLAYTON. No.

Mr. QUIGLEY. Someone could construe this as a lack of trust, or a lack of giving them the initiative to do this.

Mr. CLAYTON. Well, I feel able to say this and confident in saying it. I have been to all of our Regional Offices. I have met one-on-one with all of our regional directors. They know that I have confidence in them. And I do.

Mr. QUIGLEY. OK. Thank you.

Mr. GRAVES. Thank you, Mr. Quigley. Mr. Yoder has no further questions. Mr. Moolenaar.

Mr. MOOLENAAR. Thank you, Mr. Chairman. Just really quickly, a few things. One is, we talked a little bit about what you are doing at the SEC with cybersecurity. We talked a little bit about across the different agencies. Is there any role with the private sector collaboration that we ought to be thinking about?

Mr. CLAYTON. In terms of collaboration with the private sector, the large financial institutions have spent a tremendous amount of money on cybersecurity and have, to my mind, very good people. They have been helpful to us in things like risk assessment, both as a result of our oversight role and on a more informal basis, and

I appreciate that. And I hope that that dialogue continues and continues across the Federal financial regulators as well as DHS.

Mr. MOOLENAAR. All right. And then, just looking through the strategic plan that was from 2014 to 2018. That was prior to you getting there. I know you are working on an updated one. This one is still in effect. I just wondered if you would comment on some of these strategic goals. One was establishing and maintaining an effective regulatory environment. Two was foster and enforce compliance with Federal securities laws. Three was facilitate access to the information investors need to make informed investment decisions.

And four was enhance the Commission's performance through effective alignment and management of human information and financial capital. I wonder if you can kind of assess how we are doing on those? And as you look forward, are there any of these that you are going to bolster or prioritize over other ones?

Mr. CLAYTON. So, you are right. We are working on a new strategic plan. I expect it to be out soon. I have reviewed it with my fellow commissioners. The draft has gotten input from our various divisions and offices. It embodies many of the things that you just cited.

I would say if there is a shift to note it is this: if an American retail investor knew what we knew, how would they want us to focus our attention? And a lot of it is already in there. But that is the perspective that we have taken in shaping the strategic plan that will come out. Do I think we are doing well in most of those areas? Yeah. Do I think there is room for improvement? Yes. And the new positions we are adding are the areas where I think there could be improvement.

Mr. MOOLENAAR. Great. Well, thank you, and thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Moolenaar. Chairman, thanks for joining us today, giving your testimony, and presenting your budget request. And we will be working on this in the next several days and weeks. And hopefully, out of the subcommittee, full committee, and the House, by midsummer is our goal, which is aggressive. Will be reached.

But we have to have aggressive goals. We have got a lot to do. But we appreciate your responses today and your thoroughness in what you are doing at the SEC and look forward to seeing you again in the future. With that, this hearing is adjourned.

Financial Services and General Government Subcommittee
Hearing on the Security and Exchange Commission
for Chairman Jay Clayton

Questions for the Record Submitted by Congressman Yoder

1940 Act Advisers

Chairman Clayton, I was happy to see that the Commission recently proposed rulemaking to establish a “best interest standard” for financial professionals. In this proposal, the Commission maintained the existing distinction between broker-dealers and 1940 Act Advisers. In your statements to the Subcommittee, you indicated that you intend to maintain this distinction in future rules, including rules under Section 921 of the Dodd-Frank Act.

Question: Would it be helpful if Congress provided additional direction to the Commission on how this distinction should be delineated, especially as it pertains to the use of arbitration agreements between investment professionals and their customers/clients?

Answer: *In developing our recent proposals, we recognized the importance to investors of having a choice, in terms of both availability and cost, of both brokerage services and investment advisory services. To help preserve that choice, we were very mindful of the differing structures and characteristics of each professional-client relationship—and our proposals were built upon the applicable regulatory regimes and tailored to these distinct relationship models.*

Likewise, in future policy initiatives affecting broker-dealers and investment advisers, including any initiatives relating to dispute resolution, I would want to continue to consider carefully relevant distinctions between the two customer relationships, including the applicable regulatory regime and circumstances, and endeavor to tailor, as appropriate, any regulations in light of those distinctions.

The Commission and its staff would be happy to work with Congress, as appropriate, regarding these matters.

Questions for the Record Submitted by Congressman Bishop

Data Breach in Corporate Reporting System

In 2017, you publicly announced that in 2016, there had been an intrusion in the EDGAR test filings by third parties and that as a result they gained access to the names, dates of birth and social security numbers of at least two individuals.

Question: Would you please tell us where the Commission currently is in its subsequent understanding of the data breach as well as what measures are being taken to mitigate the prospect of future breaches?

Answer: *In August 2017, shortly after my arrival at the Commission, I learned about the 2016 intrusion into the SEC's EDGAR system. We promptly disclosed this intrusion to other authorities and the public via a press release.¹ The intrusion concerned the test filing component of the EDGAR system, and it enabled the intruders to gain unauthorized access to EDGAR filing information that was not yet public, and this information may have provided a basis for illicit trading.*

Upon learning of this intrusion, and after consulting with my colleagues, I initiated a number of different work streams to assess the nature, cause, and scope of the intrusion; the potential factors that may have led to the intrusion; the agency's response at the time; and the extent to which cybersecurity enhancements are needed at the SEC.² Personnel from various Divisions and Offices of the agency—including members of the Office of Information Technology (OIT), Division of Enforcement (Enforcement), Office of the General Counsel (OGC), and the Office of the Inspector General (OIG)—as well as outside advisors and other authorities, have been involved in these efforts. We have made progress on these fronts; and while much remains to be done, I am happy to provide a brief update on the status of our work.³

With regard to the 2016 intrusion itself, we believe that cyber threat actors were able to exploit a defect in our EDGAR system and access information in certain test filings (e.g., draft filings from a company that is not made public but are used to check the formatting of a future filings such as an earnings release to be filed on a Form 8-K). It appears the threat actors were able to access

¹ See Press Release 2017-170, SEC Chairman Clayton Issues Statement on Cybersecurity: Discloses the Commission's Cyber Risk Profile, Discusses Intrusions at the Commission, and Reviews the Commission's Approach to Oversight and Enforcement (Sept. 20, 2017), available at <https://www.sec.gov/news/press-release/2017-170>.

² See SEC Chairman Clayton Issues Statement on Cybersecurity: Discloses the Commission's Cyber Risk Profile, Discusses Intrusions at the Commission, and Reviews the Commission's Approach to Oversight and Enforcement (Sept. 20, 2017); Statement on Cybersecurity (Sept. 20, 2017), available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20>; Testimony on "Examining the SEC's Agenda, Operation, and Budget" (Oct. 4, 2017), available at <https://www.sec.gov/news/testimony/testimony-examining-secs-agenda-operation-and-budget>.

³ For example, OGC has retained an outside technology and cybersecurity consultant with extensive expertise in cyber intrusion investigations, and OIT has engaged outside technology and cybersecurity experts to advise on cybersecurity uplift efforts.

the information in the draft test filings before the public filings of the final submission. Enforcement continues to investigate potential illicit trading that may be related to the intrusion.

OGC oversaw and helped to conduct an internal review of the intrusion that was focused on understanding the nature, cause, and scope of the intrusion. I have been informed that this internal review is nearing its final stages. For now, I can report that, as a result of the review, technical, process, and organizational deficiencies have been identified. It appears that these deficiencies, taken together, contributed to internal delays in both the recognition of the intrusion itself and the appreciation of its potential scope and impact. We are working to address these issues. Although substantial work remains to be done, I will outline our principal efforts to date.

- *Governance and oversight. The OGC review has identified the need for better IT governance and oversight. We have created a new enterprise-level position of Chief Risk Officer, which will be responsible for coordinating efforts to identify, monitor, and mitigate risks across the agency.⁴ We are in the process of reorganizing our IT security office to provide additional resources in our cybersecurity operations branch, including additional management personnel to provide dedicated focus and expertise. In addition, we have launched an initiative to install Information System Security Officers in various functions to facilitate and improve collaboration between information system owners and business personnel, and to help ensure that each information system has operational security commensurate with the sensitivity of its information.*
- *Security controls. The OGC review has made it clear that the SEC would have benefitted from more robust preventative and detective cybersecurity controls, and we are working to improve our controls environment. The reorganization described above is designed to provide for increased focus on preventative and detective security and controls. Our new standalone EDGAR Business Office, established in 2017, has been working with OIT to implement technological enhancements and improve security monitoring, protections, and compliance. On that front we have made technological enhancements, including to our security monitoring processes, and implemented additional data protection technologies.*

We have expanded our use of penetration testing on our systems, including EDGAR, and we have undertaken additional efforts to analyze EDGAR's source code. In addition, we are working with outside experts and have partnered with other government agencies to assess the SEC's critical systems more broadly.

- *Risk awareness. The OGC review also makes it clear that the SEC could have benefitted from improved awareness across the agency of the sensitivity and risks related to data collection and storage. We have enhanced cyber-incident information sharing across Enforcement, OIG, and OIT, and we have improved reporting protocols for cybersecurity*

⁴ We have named Julie Erhardt as the acting Chief Risk Officer while we complete our search. Julie is a Deputy Chief Accountant at the agency and has an M.S. in Management from Stanford University. Through her 14 years at the Commission and prior work as an auditor, Julie has substantial experience in internal controls, auditing and risk management.

risks and exposures.

It is important to me to foster a culture that recognizes the great responsibility we have with respect to the data entrusted to us by our registrants and the public. We are closely scrutinizing how we can reduce any potential exposure of personally identifiable information contained in SEC systems, including EDGAR. Earlier this year, the Commission acted to eliminate the collection of social security numbers and dates of birth on a number of EDGAR forms where we concluded that the information was not necessary to our mission.⁵

Similarly, with respect to market-sensitive data, we are looking into whether we can reduce the data we take in or reduce its sensitivity (including, for example, by taking certain market sensitive data in on a delayed basis). For our systems that hold sensitive data, we have engaged an outside expert to help us assess our efforts to secure those systems.

- *Incident response. The OGC review highlighted the need to ensure that we have comprehensive incident response and escalation plans in place. We have revised the agency's incident management plan, which addresses reporting procedures and escalation protocols for cybersecurity events or incidents, and we expect to further improve the plan as we test it. And we have conducted multiple cyber-incident response exercises to help prepare appropriate decision-makers for various threat scenarios.*
- *Legacy systems. The OGC review confirmed that we need to continue and improve upon our efforts to modernize key legacy information systems, especially EDGAR, and address risks associated with bespoke systems. We have increased the focus and resources on our legacy systems, particularly with respect to maintenance and replacement of those systems. The increased funding provided to us by Congress for Fiscal Year 2018 will allow us to accelerate our transition away from certain legacy systems and functionalities toward systems that have additional security enhancements.*

To be sure, no system can be 100 percent safe from cyber intrusions, particularly in a world where cyber threat actors are often backed by substantial resources. More needs to be done to strengthen the SEC's cybersecurity posture. Indeed, efforts to access non-public information have persisted, and our uplift efforts have revealed additional areas that have required attention. But we are working through recommendations from our internal offices and several outside experts to improve our cybersecurity posture, and we expect more recommendations to come.

We are greatly appreciative of the support the Committee has provided as we work through this process. The additional funding Congress has given us, and the feedback that members of this Committee have given me, will go a long way to helping us upgrade our security posture to better protect against the persistent threats faced by the agency.

⁵ Amendments to Forms and Schedules To Remove Provision of Certain Personally Identifiable Information, Rel. Nos. 33-10486, 34-83097, IC-33077 (Apr. 24, 2018), available at <https://www.sec.gov/rules/final/2018/33-10486.pdf>.

Rulemaking Mandates under Dodd-Frank

Nearly eight years after the enactment of the Dodd-Frank Act, the Commission still faces the task of finishing rulemaking mandates under the Dodd-Frank Act.

Question: Would you briefly describe what parts of the Act have yet to be completed and the reasons for the delay?

Answer: *The remaining rulemaking mandates from the Dodd-Frank Act for the most part fall into four categories, each of which has characteristics that inform how I believe we should approach that category and the specific rules in it.*

The first category is the remaining rules required under Title VII of the Dodd-Frank Act to stand up the security-based swap regime. The SEC has finalized many, but not all, of the Title VII rules. I believe that final implementation of these rules should be done holistically – as a coherent package. The rules are substantially interrelated and this approach should allow for more efficient implementation and internal consistency. In addition, in some instances—in part because of statutory variances and differences in products and markets—the SEC’s final and proposed rules governing security-based swaps have differed, in some cases significantly, from the rules governing swaps that the Commodity Futures Trading Commission (“CFTC”) adopted pursuant to its own Title VII mandates. I believe that we should seek to harmonize our ultimate security-based swap rules with the CFTC, where appropriate, to increase effectiveness as well as reduce complexity and costs and are currently working towards doing so.

The second category is executive compensation rules for both public companies and SEC-regulated entities. As a result of the complexity and scope of the existing executive compensation disclosure regime, as well as the nature of the mandates and the disparity of views on these matters, I believe a serial approach is likely to be most efficient and have included the adoption of the requirement for additional disclosure of hedging transactions by employees, officers and directors to the Commission’s current Regulatory Flexibility Act agenda. I continue discussing with my fellow Commissioners and the staff how best to address the remaining mandatory executive compensation rules.

The third category is specialized disclosure rules, such as resource extraction disclosure. Beyond the statutory text, these rules pose additional challenges, including how the SEC can meet its obligations under the Administrative Procedure Act in areas outside its typical realm of expertise. In the case of resource extraction, we also must comply with the parameters of the Congressional Review Act. I have asked the staff to craft rules for consideration by the Commission that meet the objectives of Congress, take into account this array of procedural and substantive constraints, and bring finality to these matters.

The last category, which in some instances overlaps with the others, is mandates for which there have been relevant developments since the Dodd-Frank Act was enacted. For example, several companies already have made public their policies regarding compensation clawbacks. Some of these policies go beyond what would be required under the Dodd-Frank Act. I believe that the Commission’s rulemaking priorities should reflect these observable developments.

It is the SEC's obligation to complete the rules mandated by Congress in the Dodd-Frank Act, and I intend to do so.

Inadequate Examination of Investment Advisers

In its Fiscal Year 2019 Congressional Budget Justification and Annual Performance Plan, the Commission observed that nearly 35% of all SEC -registered investment advisers have never been examined and that the population of advisers registered with the SEC continues to grow.

Question: Would you please tell us how the Commission plans to fix such a problematic regulatory shortfall?

Answer: *I agree that reducing the number of never-before-examined registered investment advisers is an important priority for the SEC's Office of Compliance Inspections and Examinations ("OCIE").*

We have seen significant growth in the number of investment advisers—with an additional 1,000 advisers since 2015 and over 2,000 advisers since 2013—to over 12,500 advisers in 2018. In light of this trend, in 2016, the SEC reassigned approximately 100 OCIE staff to the investment adviser examination unit. As a result of this reallocation of resources, advancements in OCIE's use of technology and other efficiencies, OCIE increased its examination of investment advisers by more than 40 percent in Fiscal Year 2017 over Fiscal Year 2016—to approximately 15 percent of all SEC-registered investment advisers. Although this has been a very positive step, we will continue working to increase investment adviser examination coverage levels, while at the same time being careful to avoid decreasing examination quality or undermining other important examination priorities.

With regard to reducing the number of never-before-examined investment advisers, OCIE is addressing this in several ways. First, OCIE has made examining never-before-examined investment advisers that have elevated risk profiles one of its Fiscal Year 2018 priorities. Second, OCIE has shifted resources to its investment adviser examination program and is continuing to leverage technology to help identify potentially problematic activities or firms and to enhance its ability to select higher-risk registrants to examine, among other things. Third, OCIE has been able to reduce the number of never-before-examined investment advisers by increasing its examinations of registered investment advisers.

Our Fiscal Year 2019 budget request contemplates further resources for OCIE, including for its examination of investment advisers, and requests funding for 24 additional positions for OCIE's National Examination Program. We will continue to assess trends in the number of investment advisers and our examination coverage levels, including for never-before-examined investment advisers, and will modify our allocation of resources, as appropriate.

Cryptocurrencies

Online trading platforms have become a popular way for investors to do trades in the burgeoning and controversial market for coins and tokens through so-called Initial Coin Offerings. These coins are supposed to serve as a sort of currency and function much like the popular Bitcoin, but are often the products of fraud, with the creator having no intention of creating a viable coin. The fact that there are over 1500 cryptocurrencies available on the internet is a symptom of the problem.

Question: Would you briefly explain the SEC's current policy regarding such initial coin offering platforms and what strategic or regulatory problems such initial coin offerings are generating?

Answer: *The Commission has undertaken substantial efforts to make it clear to market participants that any digital asset that meets the definition of a "security" under the federal securities laws is subject to the full range of requirements under the federal securities regulatory regime. In addition, certain financial products that are linked to digital assets, including products linked to cryptocurrencies, may themselves be securities even if the underlying digital assets are not securities. Similarly, my colleagues and I have cautioned those who operate systems and platforms that effect or facilitate transactions in these products that they may be operating unregistered exchanges or broker-dealers that are in violation of the Securities Exchange Act of 1934. Depending on the circumstances, digital assets, both securities and non-securities, may also be subject to other federal and state laws, including those relating to commodities, banking, anti-money laundering and money transfers.*

We have encouraged those interested in this space to reach out to the SEC staff. Our staff has built significant expertise on these issues, and we recently named a new Associate Director to serve as the Senior Advisor for Digital Assets and Innovation to coordinate efforts in this area across the agency.⁶ Our door remains open to those who seek to innovate and raise capital in accordance with the law.

While some market participants have engaged with our staff constructively and in good faith with questions about the application of our federal securities laws, others have sought to prey on investors' excitement about the quick rise in cryptocurrency and ICO prices to commit fraud or other violations of the federal securities laws. I have asked the SEC's Division of Enforcement to continue to police these markets vigorously and recommend enforcement actions against those who conduct ICOs or engage in other actions relating to cryptocurrencies in violation of the federal securities laws. In doing so, the SEC and CFTC are collaborating on our approaches to policing these markets for fraud and abuse. We also will continue to work closely with our federal and state counterparts, including the Department of Treasury, Department of Justice and state attorneys general and securities regulators.

⁶ See Press Release 2018-102, SEC Names Valerie A. Szczepanik Senior Advisor for Digital Assets and Innovation (June 4, 2018), available at <https://www.sec.gov/news/press-release/2018-102>.

You have reported that many of the U.S.-based cryptocurrency trading platforms elect to be regulated as state-regulated money-transmission services outside of the direct oversight by the SEC or the CFTC. However, you have also said that both you and the CFTC chair are open to exploring with Congress, as well as with our federal and state colleagues, whether increased federal regulation of cryptocurrency trading platforms is necessary or appropriate.

Question: Having said this, would you briefly explain how and why a case could be made for placing cryptocurrency trading under a federal regulatory umbrella?

Answer: *The recent proliferation and subsequent popularity of cryptocurrency markets creates a question for market regulators as to whether our historic approach to the regulation of sovereign currency transactions (e.g., U.S. dollar-Japanese Yen transactions) is appropriate for these new markets. These markets may look like our regulated securities markets or traditional currency markets, with trading rules, quoted prices and other information. Many trading platforms are even referred to as "exchanges." However, I am concerned that this appearance often is deceiving. In reality, investors transacting on these trading platforms do not receive many of the market protections that they would when transacting through broker-dealers on registered exchanges or alternative trading systems (ATSS). These protections include best execution obligations, prohibitions on front running, short sale restrictions, insider transaction reporting and custody and capital requirements. I am concerned that Main Street investors do not appreciate these significant differences and the resulting substantially heightened risk profile.*

It appears that many of the U.S.-based cryptocurrency trading platforms have elected to be regulated as money-transmission services. Traditionally, from an oversight perspective, these predominantly state-regulated payment services have not been subject to direct oversight by the SEC or the CFTC. From a function perspective, these money transfer services traditionally have not quoted prices or offered other services akin to securities, commodities, and currency exchanges. In short, the currently applicable, state-based regulatory framework for cryptocurrency trading was not designed with trading of the type we are witnessing in mind.

In my testimony before the Senate Committee on Banking, Housing, and Urban Affairs in February 2018, I, along with Chairman Christopher Giancarlo of the CFTC, said that I was open to exploring with Congress, as well as with our federal and state colleagues, whether increased federal regulation of unregistered digital asset trading platforms is necessary or appropriate. I also am supportive of regulatory and policy efforts to bring clarity and fairness to this space.

While the Commission continues to vigorously enforce the federal securities laws, we remain committed to working with Congress and other federal regulators to assess whether increased federal regulation of unregistered digital asset trading platforms would add to investor protection and market oversight and facilitate innovation in this dynamic and swiftly evolving market.

Minorities in the Financial Industry

According to a 2017 GAO Report, minorities account for only 21% of management positions in the financial industry. This is in contrast to the general minority population of 40.9%.

Question: What efforts is the SEC taking to help improve this drastic disparity?

Answer: *The SEC, with the leadership and guidance of its Office of Minority and Women Inclusion (OMWI), continues to implement Section 342 of the Dodd-Frank Act, including requirements directed toward promoting diversity and inclusion and increasing the representation of minorities in the financial services industry. The Dodd-Frank Act established Offices of Minority and Women Inclusion at the SEC and other federal financial regulatory agencies and assigned these offices the responsibility for all agency matters relating to diversity in management, employment, and business activities. The Dodd-Frank Act also required each agency's OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the agency.*

In June 2015, the SEC joined with the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (the Board), Federal Deposit Insurance Corporation (FDIC), Bureau of Consumer Financial Protection (BCFP), and National Credit Union Administration (NCUA) in issuing "Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies" (Joint Standards) in a final interagency policy statement.⁷ The Joint Standards provide a framework for regulated entities to create and strengthen their diversity policies and practices—including their organizational commitment to diversity, workforce and employment practices, procurement and business practices, and practices to promote transparency of organizational diversity and inclusion.

The Joint Standards contemplate that regulated entities, in a manner reflective of their size and other characteristics, may voluntarily: (a) conduct self-assessments of their diversity policies and practices at least annually; (b) publish information about their diversity policies and practices online, and (c) submit information pertaining to their diversity self-assessments to the OMWI Director of their primary federal financial regulator.

To facilitate self-assessments and provide a template for submitting diversity assessment information by certain of its registrants, the SEC created a voluntary form entitled "Diversity Assessment Report for Entities Regulated by the SEC" (Diversity Assessment Report). In January 2018, OMWI publicly announced that SEC-regulated entities would receive an email from OMWI with an invitation to complete the Diversity Assessment Report online using a secure survey-management system.⁸ The announcement and the subsequent distribution of the Diversity Assessment Report to regulated entities were designed to promote transparency and awareness about the Joint Standards.

⁷ 80 FR 33016 (June 10, 2015); SEC Release No. 34-75050, available at <https://www.gpo.gov/fdsys/pkg/FR-2015-06-10/pdf/2015-14126.pdf>.

Since issuing the Joint Standards, OMWI has promoted the Joint Standards on various occasions, such as educational events hosted by industry trade associations and conferences of professional associations. In the fall, the OMWI Directors of the Agencies plan to host an event for regulated entities that will focus on the Joint Standards and self-assessments of diversity policies and practices. The SEC intends to use the information collected through the Diversity Assessment Reports to ascertain which policies and practices reflected in the Joint Standards are being adopted by SEC-regulated entities, and to identify and highlight those policies and practices that have been successful.

With regard to diversity at the agency, the Dodd-Frank Act also requires the SEC to take specific affirmative steps to seek diversity at all levels of the agency's workforce. The agency is committed to fulfilling this important mandate. These efforts are especially important with regard to agency leadership and management positions, and I have worked with Pamela Gibbs, OMWI's Director, and her staff to continue improving the diversity at all levels at the SEC.

Under OMWI's leadership, the SEC pursues a comprehensive strategy for building and maintaining a diverse workforce and fostering an inclusive workplace culture. A key of component of that strategy has been outreach and recruitment to develop and maintain a pipeline of diverse talent for future SEC employment and internship opportunities.

The SEC's student-focused outreach and recruitment initiatives are intended to encourage interest in future careers at the SEC and in financial services, including among diverse candidates. SEC employees nationwide actively participate in diversity outreach, serving as speakers and panelists at conferences and meetings of partnering organizations and representing the SEC at career fairs and outreach events held on campuses of women's colleges and minority-serving colleges and universities and law schools. At these events, SEC employees provide information on a wide variety of topics, including the specialized skills and experience needed for careers in financial services.

Examples of the SEC's outreach activities in the past year that were geared toward diverse students include:

- *Hispanic National Bar Foundation (HNBF) Law Camp: The SEC headquarters in Washington, DC hosted high-school students from around the country participating in the HNBF's Future Latino Leaders Law Camp. The visit arranged by OMWI included a career panel with senior SEC attorneys and a question and answer session that helped students understand how to prepare for law school and careers in corporate and securities law. Students toured the SEC's offices and met with senior members of my staff.*
- *National Association of Black Accountants (NABA) National Convention: An accounting professional from the SEC's Office of the Chief Accountant served on an industry panel at NABA's National Convention. The conference attendees included many minority students majoring in accounting.*
- *International Leadership Foundation (ILF): ILF is an organization that promotes public service among Asian American youth. OMWI hosted ILF's summer cohort at the SEC for a career seminar, financial literacy event and tour. ILF's college students learned about pathways to SEC careers and how the capital markets*

promote American entrepreneurship and prosperity. In addition, the SEC participated in ILF's career fair.

SEC employees also conducted outreach and attended events at several schools including Morgan State University, Howard University, Florida International University, New Mexico State University, and University of Puerto Rico.

On a personal level, promoting diversity in the securities industry and at the SEC has been very important to me. I have met with some of these incredibly talented students when they have visited the SEC. I want to make sure we are doing everything we can to encourage them to consider a career in the securities industry (and particularly at the SEC), and to provide them with the opportunity to grow and succeed should they make that choice. Earlier this summer, I had the opportunity to participate at an annual conference sponsored by the National Association of Securities Professionals in Houston, where I also met with the principals and interns of a local minority-owned securities firm to hear about their successes and some of the challenges they have faced. Here at the SEC, I have led agency-wide roundtables on mentoring and unconscious bias, and I have worked with the staff to develop a mentoring pilot program at the Commission. I also serve as sponsor for the agency's African American Council and the Hispanic and Latino Opportunity, Leadership, and Advocacy Committee. It is my hope that through these efforts and others, we will continue to build our pipeline and foster an environment that is conducive to growth and advancement.

In furtherance of these objectives, the SEC has established and maintains relationships with minority and women professional associations and educational organizations to support the agency's diversity objectives. These collaborative relationships, referred to as "Diversity Partnerships", provide a variety of opportunities for outreach and recruitment. The SEC has established Diversity Partnerships with student-focused organizations, such as the Hispanic Association of Colleges and Universities, National Black MBA Association, Thurgood Marshall College Fund, and National Association of Asian MBAs, Council on Legal Education Opportunity, and the International Leadership Foundation. In addition to these formal partnerships, the SEC collaborates regularly with academic institutions and educational organizations.

The SEC's Student Honors Program provides opportunities for undergraduate, graduate, and law students to learn about securities regulation and the work of the SEC. The ten-week internship is offered at headquarters and in the SEC's 11 regional offices. The SEC engages in outreach and recruitment to attract student interns from educational institutions specified by the Dodd-Frank Act—historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations.

The SEC's efforts to develop a pipeline of diverse talent are targeted at high school students as well. The agency's Professionals Reaching Out to Promote Excellence and Learning for Students (PROPELS) program, held at SEC headquarters and in several regional offices, provides an opportunity for students from high schools with high minority populations to gain exposure to careers in business, law, and technology and learn about the importance of financial education.

Question: What steps would you like Congress to take to provide you with the tools to increase minority participation?

Answer: *In the Dodd-Frank Act, Congress provided the SEC with the authority and a platform to increase awareness of workforce diversity and inclusion objectives among regulated entities in financial services. The SEC appreciates Congress's continued support as it works to implement this important component of the Dodd-Frank Act. Going forward, OMWI will continue to implement Section 342 of the Dodd-Frank Act and promote transparency and awareness of the policies and practices for promoting workforce diversity and inclusion that are described in the Joint Standards, with an emphasis on highlighting those policies and practices that are most successful and promoting and encouraging diversity. Additionally, we will continue seeking to improve diversity within the SEC's staff, including in our leadership ranks.*

Consolidated Audit Trail

Recently, you reportedly indicated that you had serious concerns with how various aspects of the Consolidated Audit Trail, the recently-started SEC regime for monitoring securities market trades, were being addressed at the SEC.

Question: In that context, would you briefly describe your key concerns with the Commission's roll out of the CAT, which has been years in the making, and which SEC officials have described as critical to the agency's understanding of a world of increasingly complicated forms of securities trading?

Question: Do you have an alternate proposal to address your concerns?

Answer: *The development of a consolidated audit trail ("CAT")—a single, comprehensive database that is designed to allow regulators to more efficiently and accurately track trading in equity and options throughout the U.S. markets—has proven to be challenging for the Commission and the 22 self-regulatory organizations ("SROs") who are responsible for designing, building and operating the CAT.⁹*

Rule 613 of Regulation NMS requires FINRA and the national securities exchanges (collectively, the "SROs") to jointly submit a national market system ("NMS") plan (the "CAT NMS Plan") to create, implement, and maintain the CAT that will capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. The Commission approved the CAT NMS Plan on November 15, 2016.

⁹ The SROs are: Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe Exchange, Inc.; New York Stock Exchange LLC; NYSE American, LLC; NYSE Arca, Inc.; NYSE National, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Investors' Exchange LLC; BOX Options Exchange LLC; Financial Industry Regulatory Authority, Inc.; and Chicago Stock Exchange, Inc.

The deadline in the CAT NMS Plan for the SROs to begin the first phase of reporting to the CAT was November 15, 2017. The SROs missed that deadline, and shortly thereafter I issued a statement that I would not support a request for the SROs to extend the deadlines for reporting data to the CAT in the absence of a comprehensive and credible work plan, with, among other components, verifiable milestones, as well as governance and security enhancements.

The SROs remain out of compliance with the CAT NMS Plan today. While progress is being made, the process remains slow and cumbersome. We believe the SROs' efforts have been hindered by a variety of factors, including issues relating to governance, coordination challenges among the SROs, disagreements over system specifications and ineffective vendor and project management.

To address our concerns, I and Division of Trading and Markets Director Brett Redfearn expressly urged the SROs to closely monitor development of the CAT by Thesys (the contractor hired by the SROs) to ensure its consistency with the CAT NMS Plan, and asked that the SROs develop a "Master Plan" for completing the CAT that sets forth a timeline with detailed, objective, and achievable milestones, clearly defined obligations for the SROs and Thesys, and a comprehensive description of the functionality that will be delivered on specified dates. We requested that the Master Plan include a checklist of all material deliverables (with due dates) to be made by Thesys. The SROs submitted this Master Plan on May 25, 2018 and Director Redfearn recently released a statement providing an update on the status of CAT.¹⁰ I believe that the creation of this Master Plan is a positive step towards the fulfillment of the SROs' obligations under the CAT NMS Plan, and, if the SROs and Thesys meet the milestones set forth therein in a satisfactory manner, I believe the Master Plan will help the SROs and Thesys to more efficiently and capably build and operate the CAT.

Consistent with our efforts to instill effective project planning, we also advised the SROs that they should establish a process by which they will address any Thesys performance issues and evaluate and resolve any questions about Thesys' ability to perform within a reasonable timeframe so that CAT implementation is not jeopardized.

Fiduciary Standard

Recently, the Commission voted out potentially critical proposal that would reform the obligations that financial professionals who provide investment advice to retail clients must adhere to in their relationship with those clients. Additionally, the 5th Circuit has vacated the Department of Labor's rules that generally subjected certain financial professionals to the higher fiduciary standards for clients with ERISA-based retirement accounts. Since it is questionable whether this administration's Department of Labor will decide to appeal the ruling, the final rules that emerge from the SEC proposals could ultimately be "the only game in town" in this area. A central part of the proposal is a new "best interest" standard for broker-dealers. Among other things, it reportedly would provide for an obligation of care that includes exercising reasonable diligence and having a reasonable basis to believe that an investment product is in a client's best interest. However, the proposal's sole dissenting SEC commissioner has argued that

¹⁰ See Brett Redfearn, *Statement on Status of the Consolidated Audit Trail* (Aug. 27, 2018), available at <https://www.sec.gov/news/public-statement/tm-status-consolidated-audit-trail>.

the new standard does not really represent a standard that would adequately mitigate the current broker-dealer conflict of interest problems. She has argued that the best interest proposal essentially amounts to a preservation of the existing suitability standard for brokers, with the addition of a few clerical responsibilities governing additional disclosures and tweaks to a firm's policies and procedures.

Question: In the context of such serious concerns, would you briefly explain why the adopted “best interest” proposal represents significant progress with respect to moving broker-dealers toward a position in which their clients’ interests are paramount?

Answer: *Proposed Regulation Best Interest would enhance broker-dealer standards of conduct by establishing an overarching obligation requiring broker-dealers to act in the best interest of the retail customer when making recommendations of any securities transaction or investment strategy involving securities. Simply put, under proposed Regulation Best Interest, a broker-dealer cannot put his or her interest ahead of the retail customer’s interest.*

Proposed Regulation Best Interest incorporates that key fiduciary principle and goes beyond and enhances existing suitability obligations under the federal securities laws. Most fundamentally, it would explicitly require that recommendations be in the “best interest” of the retail customer—a requirement not present in current regulations. To meet this requirement the broker-dealer would have to satisfy disclosure, care and conflict of interest obligations.

Among other things, this standard’s obligations would put greater emphasis on cost and financial incentives as factors in evaluating the facts and circumstances of a recommendation. Additionally, the standard would require broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to identify and eliminate, or disclose and mitigate, material conflicts of interest related to financial incentives. This is a significant change as existing broker-dealer and investment advisor obligations under the federal securities laws largely center on conflict disclosure rather than conflict management and mitigation.

Proposed Regulation Best Interest incorporates the key fiduciary principles underlying an investment adviser’s fiduciary duty, recognizing that, while their relationship models differ, both broker-dealers and investment advisers often provide advice in the face of conflicts of interest. These common principles are easier to compare given that as another part of our reform package we issued a proposed interpretation reaffirming—and in some cases clarifying—the fiduciary duty that investment advisers owe to their clients. The interpretation is designed to provide advisers and their clients with a reference point for understanding the obligations of investment advisers to their clients and, specifically, reaffirms that an investment adviser must act in the best interests of its client.

While the two standards draw from common principles, some obligations of broker-dealers and investment advisers will differ because the relationship types of these financial professionals differ. But the principles are the same, and I believe the outcomes in both cases should be the same: retail investors receive advice provided with diligence and care that does not put the financial professional’s interest ahead of the investor’s interest. I believe our proposals are designed to make investors get just that whether they choose a broker-dealer or an investment adviser.

THURSDAY, APRIL 26, 2018.

FEDERAL COMMUNICATIONS COMMISSION

WITNESS

HON. AJIT PAI, CHAIRMAN

Mr. GRAVES. Good afternoon. We will call this hearing to order. I would like to recognize the Federal Communications Commission Chairman, Ajit Pai. Thank you for joining us today. I know you are familiar with this subcommittee. You have been a participant in many different capacities over the years. We thank you for joining us today in your role as chairman.

The focus of today's hearing is going to be on the FCC's 2019 budget request—although, like me, I am sure our subcommittee members have a few policy items they might want to discuss today as you are with us. Before I recognize Ranking Member Quigley for his opening remarks, I want to highlight a couple of topics that I am personally interested in and would love to learn a little bit more about today.

First, the committee provided \$1 billion over the next 2 years, in the most recent government funding bill, to set the stage for the next generation of wireless service for our country, such as 5G phone networks, while helping keep local television and radio stations on the air, a process known in Washington-speak as repack. So, Mr. Chairman, we recognize that broadcasters and other entities participated in good faith to make sure that the spectrum auction was successful. And we here on the Appropriations Committee worked closely with our friends on the Authorizing Committee as well, particularly with Chairman Greg Walden, who has been a great champion on this issue, along with his committee members, to ensure that our broadcasters had all the resources necessary to make required moves. So, we are certainly interested in hearing about that process and the progress that you have made thus far, and what you plan to do in the days ahead.

In addition, I know that rural broadband expansion is one of your top priorities with the FCC, and you will find many members of this subcommittee have interest in that as well. So, we share that same enthusiasm and believe that the deployment of broadband in rural and disadvantaged areas is a driver of economic development, jobs, and opportunity. We look forward to that discussion and hearing about the progress there.

Finally, I want to commend you for the work that you have done to restore internet freedom. It is certainly controversial, but nothing that is new to you. You are very familiar with the topic and have been a great advocate for repealing the net neutrality regulations. You and your fellow commissioners engaged in a very transparent, very open, and I would say spirited process, letting the

American people participate in that debate and the proceedings as well, in what many would say was an unprecedented fashion. So, thank you for that. We know that your work will help ensure that the online marketplace continues to be open, and free, and flourish, while increasing broadband access for rural and low-income Americans. So, we know that will be an issue today that you might want to touch on as well.

But again, we welcome you. We look forward to hearing your testimony in a few minutes. And prior to that, I would like to recognize Ranking Member Quigley for any opening remarks he might have.

Mr. QUIGLEY. Thank you, Mr. Chairman. Thank you, chairman, for being here today. The FCC may have, at one time or another, for many folks, just be another alphabet soup agency in the sprawling government bureaucracy, but it has become more of a household name recently. To me, that either means you have made sweeping improvement to the agency, as the chairman seems to indicate. Or as other evidence indicates, we have taken a series of actions that could impact and disrupt the lives of nearly every American, every walk of life and sector in this economy.

It is no secret that you certainly drew a newfound level of attention to the agency when you led the charge to roll back net neutrality protections. In our 21st century world, equal access to all online content is the cornerstone of freely-moving communications and commerce. While the Obama era protections of net neutrality were not perfect, your efforts to eliminate these vital safeguards could cause severe harm to consumers, all while stifling innovation and curtailing free expression. This is not to mention that the FCC's rollout was handled in ways that seemed to violate the American Procedures Act and have already spawned numerous State attorneys general investigations into wrongdoing.

If there were people who were not paying attention to the FCC after your actions on net neutrality, things may have changed when the video of dozens of Sinclair news anchors forced to read identical and highly political text went viral online in the news media. This, of course, brings us to the ongoing review of the proposed merger between Sinclair and Tribune Media, which has raised troubling concerns that have yet to be cleared up. The FCC has taken numerous actions to call into question, sir, your independence in the matter. And at the very least, demonstrate that appearance of preferential treatment for Sinclair, a broadcasting group with close ties to the White House.

A swift series of FCC actions to ease limits on media ownership have cleared almost all restrictions for Sinclair to move forward with its merger proposal. An FCC commissioner that you served with has even said—and I quote—“Everything the FCC has done is custom-built for the business plan of one company, and that is Sinclair.” Taken in context with reported meetings between you and your office, the White House officials, and Sinclair representatives in a relatively brief period of time, these actions reveal a disturbing pattern that jeopardizes the independence of the FCC—so much so that you yourself are now under an investigation by the FCC's Inspector General for improper coordination with Sinclair.

If approved, Sinclair would control enough local TV stations to reach 72 percent of U.S. households, significantly harming media diversity and lowering consumer choice. To ease mounting anti-trust concerns, Sinclair just announced it will divest 23 stations in 18 markets. However, Sinclair stretches the definition of divestiture under the plan to something unrecognizable.

For example, WGNTV in my home market of Chicago would reportedly be sold to the CEO of a Maryland car dealership, which is owned by the executive chairman of Sinclair. Sinclair would have the option to buy back the station at a later date. Under this arrangement, Sinclair would also have control over all business decisions made by WGN, without having to claim technical ownership.

While these are stations that currently enter into appropriate joint sales and shared service agreements, this arrangement makes a mockery out of the FCC's own rules. When you combine a media giant cozy with the President and the White House, the rolling back of ownership rules for the benefit of one company, and a sign-off on dubious ownership agreements, you get a recipe for less broadcasting competition, less high-quality local content, and less diversity of views.

In closing, I would just like to add that I am pleased to have you in front of the committee today, something we did not have the opportunity to do last year. I believe this committee has many questions for you today that have been unanswered during previous media interviews and public appearances. It is worth noting that most of these past appearances have occurred with conservative media outlets and friendly audiences. I hope if today's meeting goes well, you might consider making yourself to a more diverse range of outlets going forward. I look forward to hearing your testimony and discussing these and other issues with you today. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Quigley. Chairman Pai, thanks again for joining us today. Know that members will be coming and going a little bit throughout the afternoon with other subcommittee meetings. We look forward to having you with us today. I know you want to discuss a little bit about your budget requests, but you are certainly no stranger to some of the policy questions. We look forward to hearing your opening remarks at this time.

Mr. PAI. Well, thank you, sir. Chairman Graves, Ranking Member Quigley, members of the subcommittee, thank you for the opportunity to present the FCC's fiscal year 2019 budget request. We will use the requested funds to achieve our critical strategic goals. First, closing the digital divide; second, promoting innovation; third, protecting consumers and public safety; and fourth, reforming the FCC's processes.

In fiscal year 2018, we received \$322 million, a reduction of about 5 percent from 2017, minus the headquarters relocation funds. To put that number in perspective, in inflation-adjusted terms, our appropriation has declined by over 17 percent since fiscal year 2009. These reductions have required the FCC to operate more efficiently. Since I became chairman in January of 2017, we have done just that: cutting costs and accomplishing more with less money.

For example, we have saved a lot of money by closing a warehouse where we processed our mail, and instead contracting with a vendor that performs this task for many government agencies. And by the end of fiscal year 2018, we project that the commission's FTE count will have declined by over 10 percent in just 2 years.

In light of this, our fiscal year 2019 budget request proposes to freeze our FTE count rather than reduce it again. I believe that further reductions in staffing next year could compromise the commission's ability to accomplish its mission, particularly in light of the many additional responsibilities that Congress has assigned us in the omnibus appropriations bill. Pursuant to this legislation, we must revise our application and regulatory fee schedules, amend caller ID spoofing rules, complete a rule-making on 911 call location accuracy, use the Connect to Health tool to create a map overlaying opioid drug abuse with broadband access, and coordinate with NTIA and its use of \$7.5 million in infrastructure funds for broadband mapping. We have also been tasked with writing reports for Congress on a variety of important topics.

Now, in our budget request, we are asking for \$8.5 million for one-time information technology—or IT—investments. Many of our IT systems and applications are quite old, and it is becoming harder to keep them running. And that is why we are seeking funding, to shift from outdated legacy systems and applications toward modern, cloud-based solutions. Taking this step will save money in the long run, improve resiliency, reduce cyber security vulnerabilities, and enhance the services that we provide to those we regulate and to the American people.

These IT investments are the main reason why we are requesting a slight bump up in appropriations for our regular operations in fiscal year 2019, from \$322 million to about \$333 million. But even with this modest increase, our fiscal year 2019 spending level would be identical to the amount authorized in the fiscal year 2018 omnibus, and below our fiscal year 2017 appropriation.

In our budget request, the FCC's auctions program is projected to increase spending slightly, to \$112,734,000, from the fiscal year 2018 level of \$100,150,000, which was a 5 percent drop from fiscal year 2017. And this is because next year we will be busy when it comes to auctions.

We have two new spectrum auctions scheduled in the 28 gigahertz and the 24 gigahertz bands that are critical to American leadership in 5G, the next general of wireless connectivity. And we have much work to do on the post-incentive auction repacking process. We need to develop rules for the new programs recently approved by Congress to extend funding to low-power television stations, and TV translators, and FM radio stations that incur costs from the repack. We also have to decide how to allocate money for consumer outreach related to the repack.

And by the way, the billion dollars that you appropriated for fiscal year 2018 and 2019 for the incentive auction repack is already having an important impact. Just last week, we enabled full-power television broadcasters to get access to up to 92.5 percent of their estimated costs. This boost will make it easier for stations to move ahead with post-auction construction.

Finally, despite our budget planning, unforeseen problems and disasters can upend our best efforts. For instance, during this fiscal year, we have had to use every tool in our toolbox to help people on the ground in hurricane-stricken regions, to get communications networks up and running, including using universal service fund money and experimental licenses. And we are not done yet. I have proposed a \$750 million *Uniendo a Puerto Rico Fund*—or “Bringing Puerto Rico Together Fund”—and a \$204 million *Connect USVI Fund* for the Virgin Islands, to provide more short-term assistance for restoring communications networks in the aftermath of Hurricanes Irma and Maria, as well as longer-term support for expanding broadband access throughout the islands.

In short, we have accomplished a great deal in the past year and will have a full plate next year. And it is the appropriation that you provide, along with the hard work of the Commission’s talented staff, that makes all of this possible. And so, I want to thank you for your dedication to helping our agency have the resources it needs to serve the public interest. I look forward to answering your questions and to working with you and your staffs in the time to come.

Thank you, Mr. Chairman, for your indulgence.

[The prepared statement of Mr. Pai follows:]

**STATEMENT OF
CHAIRMAN AJIT PAI
FEDERAL COMMUNICATIONS COMMISSION**

HEARING ON THE FCC'S FISCAL YEAR 2019 BUDGET REQUEST

**BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES**

APRIL 26, 2018

Chairman Graves, Ranking Member Quigley, and Members of the Subcommittee, thank you for inviting me here to present the Federal Communications Commission's (FCC) Fiscal Year (FY) 2019 Budget Request. The Commission is requesting a spending level of \$333,118,000, derived from regulatory fees for regular FCC operations, and an auction spending cap of \$112,734,000.

This fiscally responsible request will provide the FCC with the resources necessary to advance its critical strategic goals: (1) closing the digital divide; (2) promoting innovation; (3) protecting consumers and public safety; and (4) reforming the FCC's processes.

In particular, the FCC will continue to focus on expanding high-speed broadband access throughout the United States and bringing what I call "digital opportunity" to every American. We will continue to remove regulatory obstacles that unnecessarily slow down broadband deployment and make it more expensive. And we will continue to modernize our Universal Service Fund (USF) programs so that we get the most broadband bang for the buck. With respect to USF, we are moving forward this year with the nearly \$2 billion Connect America Fund Phase II reverse auction to expand fixed broadband service to unserved regions, and are targeting 2019 for the \$4.5 billion Mobility Fund Phase II reverse auction that will deliver 4G LTE access to many more Americans.

As you are aware, the Commission received an appropriation of \$322,035,000 for FY 2018. This number represented a reduction of approximately five percent from our FY 2017 appropriation, minus the directed funding for our headquarters relocation. To put our budget in perspective, in real, inflation-adjusted terms, the FCC's appropriation has declined by over 17 percent since FY 2009.

These reductions have required the Commission to operate more efficiently. Since I became Chairman in January 2017, we have done just that, initiating management improvements to cut costs and accomplishing more with less money. For example, we have saved a significant amount of money by closing a warehouse where we processed our mail, and instead contracting with a vendor that performs this task for many government agencies. We also are reducing our workforce in FY 2018 to comply with OMB Memo 17-22, the Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce. We value our workforce and recognize the importance of employee morale to the Commission's operations, so we are combining regular attrition with voluntary personnel actions to achieve these levels. By the end of FY 2018, we project that the Commission's full-time equivalent (FTE) count will have declined over 10 percent in two years. In light of this, our FY 2019 budget request proposes to freeze our FTE count rather than reduce it again—because further reductions in staffing would compromise the Commission's ability to accomplish its mission.

The need to stabilize our FTE count is especially important given the many additional responsibilities Congress assigned the FCC in the Fiscal Year 2018 Consolidated Appropriations Act (Omnibus). The FCC-related sections of the Omnibus and accompanying Explanatory Statement require the Commission to revise its application and regulatory fee schedules, amend its Caller ID spoofing rules,

complete a proceeding on 911 call location accuracy, use the Connect2Health tool to create a map that overlays opioid drug abuse with the degree of broadband access in an area, and coordinate with NTIA in its use of \$7.5 million in infrastructure funds for broadband mapping. We also have a broad range of reporting requirements on several Commission objectives, including rural call completion, veterans' broadband access, broadband coverage in Indian Country, modernizing the high-cost Universal Service Fund program, and information technology (IT) modernization efforts. And under the "Mobile NOW" section of the Omnibus, we are required to move forward with freeing up additional low-, mid-, and high-band spectrum for 5G services, along with new spectrum for unlicensed use. Timely meeting these obligations requires the human resources we currently have.

As part of our efforts to improve the Commission's workforce, we are following through with establishing an Honors Engineering Program this year to recruit recent engineering graduates. As the technologies that we regulate become more complex, it is important for us to bolster the ranks of engineers at the Commission. Sophisticated technical analysis is at least as important as the legal analysis that supports our decisions. In the past, we have not replenished our engineering resources. Now, we will, with a program that will stand alongside our Honors Attorney Program.

Additionally, a thorough review of our staffing and organization led us to determine that we must strengthen the role of economics and data analysis at the Commission so that our decisions are driven by evidence and produce benefits that outweigh their costs. Accordingly, the Commission is in the process of creating the Office of Economics and Analytics to coordinate the contributions of economists and data professionals throughout the FCC. Right now, attorneys have a seat at the policymaking table through the Office of General Counsel and engineers have a seat through the Office of Engineering and Technology. The Office of Economics and Analytics will give economists their rightful seat, too.

The Omnibus Explanatory Statement's IT reporting requirement and the reauthorization language elevating the FCC's Chief Information Officer's status, highlight Congress' desire to ensure that the FCC has the resources necessary to modernize its IT systems and applications. We consider this effort an essential operations improvement. Many of these systems and applications are quite old, and it is becoming increasingly difficult to keep them operational. But by moving away from outdated legacy systems and applications toward cloud-based solutions, we will save money, improve resiliency, reduce cybersecurity vulnerabilities, and enhance the services we provide to those we regulate and the American people. The Commission's budget request of \$8,535,200 for one-time IT investments—a request which was developed in close coordination with the Commission's Acting Chief Information Officer—shows our commitment to your directives while at the same time representing a modest investment that should pay dividends in the long run.

The IT investments also are the main reason why we are requesting a slight bump up in appropriations for our regular operations in FY 2019, from \$322,035,000 to \$333,118,000. Importantly, this FY 2019 spending level is identical to the amount authorized in Division P of the FY 2018 Omnibus.

Our auctions program, which has been so successful in driving economic growth while directing billions of dollars into the Treasury, is projected in the FY 2019 request to increase spending slightly to \$112,734,000 from the FY 2018 level of \$111,150,000. The current fiscal year saw a five percent drop from the FY 2017 high of \$117 million. The upcoming fiscal year will be a busy one on the auctions front. For example, we intend to hold at least two high-band spectrum auctions—one for the 28 GHz band and another for the 24 GHz band. Conducting these auctions successfully and promptly will be critical to American leadership in 5G, the next generation of wireless technology. At a minimum, in FY 2019 we also will be engaged in preparations to auction additional high-band spectrum as well as mid-band spectrum in the 3.5 GHz band.

With the auction funds we are requesting, we will also continue the critical work of facilitating the post-Incentive Auction repack. The Financial Services and General Government section of the Omnibus provided up to one billion dollars in funding to complete the repacking process, in increments of

\$600,000,000 and \$400,000,000 in FY 2018 and FY 2019, respectively. Thank you for this critical funding. First and foremost, the funds will be used by the Commission's Incentive Auction Task Force to reimburse the relocation costs of full-power television stations. Second, the appropriated funds will be used to provide funding for low-power television stations, TV translators, and FM radio stations that incur costs resulting from the repack, as well as money for consumer outreach related to the repack.

Just last week, the funds you appropriated allowed the Commission to increase the allocations available to full-power television broadcasters so that they have access to up to 92.5 percent of their estimated costs. This further allocation permits broadcasters to execute their post-auction construction, prevents undue financial burdens, and minimizes the likelihood that we will need to claw back funds moving forward. Importantly, noncommercial stations associated with state college systems that faced problems with local anti-deficiency statutes should now be able to maintain their licenses and have the funds on hand to finance the repack.

The FY 2018 Omnibus provisions related to the Incentive Auction repack will add significantly to our workload during FY 2019. We are now tasked with developing a rulemaking and overseeing the distribution of funds for three new programs, at least two of which—LPTV/translator repacking costs and repack-associated FM radio station costs—will involve significant data analysis, new information technology assets, and staffing. We are continuing to evaluate the potential costs and look forward to providing the Office of Management and Budget (OMB) and this Subcommittee with a spreadsheet of specific costs. Given the complexity of developing the prior analysis for the full-power stations and the sheer number of stations likely to seek funding under these new programs, we expect that this effort will be resource-intensive.

Finally, it is important to note that despite our planning and hard work in developing a budget, sometimes unforeseen problems and disasters can render the best budget difficult to manage. For example, when hurricanes wreaked havoc last year on the people of Puerto Rico, the U.S. Virgin Islands, Texas, and Florida, we deployed staff to the field and I personally travelled to Puerto Rico twice. We also took a wide variety of actions to assist with recovery and restoration efforts, from accelerating telecommunications carriers' universal service funding to approving experimental licenses for broadband access, and we continue to work toward the complete restoration of communications services.

We are using every tool in our toolbox to help people on the ground and get communications networks up and running as soon as possible. And we aim to do more. In early March, I proposed to create a \$750 million *Uniendo a Puerto Rico Fund* (Bringing Puerto Rico Together Fund) and a \$204 million *Connect USVI Fund*. Each would provide additional short-term assistance for restoring communications networks in the aftermath of Hurricanes Irma and Maria and longer-term support for expanding broadband access throughout the islands. I hope my colleagues register their support for this proposal soon.

Although our agency did not receive disaster funds, our staff devoted all available resources to help deal with these catastrophes. That dedication reflects how I see our agency: nimble, focused, and imbued with a can-do attitude when it comes to new challenges within our mandate. It might be dealing with hurricane recovery on one day, illegal robocalls the next, and a false missile alert in Hawaii the day after that. We do not have an easy mission, and sometimes we will disagree on the methods for seeing it through. But I'm proud of the staff at the Commission for its commitment to serving the American people and promoting the public interest.

* * *

Thank you for this opportunity to discuss the FCC's budget proposal. I will be pleased to answer any questions that you may have.

Mr. GRAVES. Thank you, Chairman Pai. We certainly have your prepared statement as well that I know each member has taken time to review.

I wanted to ask you just a little bit about the billion-dollar investment that we provided in the last government funding bill. Could you give us an overview of the process and how much of those resources have been allocated, and are out the door. Are the resources provided sufficient for the plan that you are putting in place to make sure that everything goes smoothly and it is all taken care of?

Mr. PAI. Thank you for the question, Mr. Chairman. Prior to the legislation passing, we had made very strong efforts to make sure that the repack was proceeding apace and smoothly. There are approximately, I believe, something like 4,554 licenses that we have allocated, which is a great many of them. Additionally, we have been working extensively with broadcasters to make sure that we get some of the criteria out there for what would constitute compensable funds.

Thanks to this legislation, as I mentioned in my opening statement, we have now been able to increase the allocations available for broadcasters. So, now, up to 92.5 percent of their costs will be covered. Additionally, we have taken the legislation's instruction very seriously, and I have asked our incentive auction staff to start looking at ways to implement some of the instructions with respect to low-power TV stations, and translators, and FM stations—as well as looking at ways to promote consumer outreach, as Congress requested.

So, we are very grateful to Congress on a bipartisan basis for extending those resources. And we are committed to making sure the incentive auction continues to go smoothly.

Mr. GRAVES. Do you think there is sufficient funding for the low-power and FM stations?

Mr. PAI. That is the decision that Congress made, and we respect that decision. And thus far, we do not have any reason to believe that it is inadequate.

Mr. GRAVES. And so, a concern that this committee would have, too, is that making sure the reimbursements are for costs that would be reasonably incurred. How do you ensure that? What is your protocol for that?

Mr. PAI. That is where we rely heavily on the determinations by our expert staff. There are some things, I think, that people can agree are reasonably related to the repack, and there are costs that we can agree are not. And that line-drawing exercise is something that we have to be very careful about. Because after all, these are limited funds. And we want to make sure that we are only allocating funding to the extent that is required under the law.

Mr. GRAVES. And one last question related to this. \$50 million was allocated for consumer education. Can you share with us how you intend to use that for consumer education? What would be your vision for that? I do not know that I have seen a chairman in this role travel the country like you have to just meet with groups, whether they are students in schools, or civic groups, just to talk about what is important when it comes to the FCC. So, this

\$50 million out of your spending bill, what type of activities would you envision for it?

Mr. PAI. Well, first, Mr. Chairman, thank you for the kind words. It is one of the great benefits of this job to be able to travel around the country and see how people are impacted, from Scottsville, Kentucky, to Utuado, Puerto Rico—each of those places I visited over the past couple of months.

With respect to consumer outreach, as I said, we are still in the early stages. I have asked our staff to take a look at the range of options that are permitted under the law and given our resources. And we have some precedents. During the digital television transition, of course, we engaged in a very robust consumer outreach function. And so, we will be looking to that precedent, along with what some of the potential vulnerabilities are, in terms of consumer awareness, going forward. And we would be happy to keep the committee apprised as that effort develops.

Mr. GRAVES. That is great. And then, one last thought on a different topic. I know we mentioned earlier that rural broadband expansion is one of your top priorities. In your travels across the country, you have certainly seen the need for that. As we go through this year and next year, how do you see that rolling out and your vision coming to be?

Mr. PAI. Thanks for the question. I am very optimistic about what the future holds—for the next year in particular—for rural broadband. In July, we will be starting our \$2 billion Connect America Fund Phase 2 auction to get fixed broadband to unserved parts of the country.

Hopefully, next year, we will be kicking off the \$4.5 billion Mobility Fund, Phase 2, to get 4G LTE to unserved parts of the country. We have done rate of return forms to extend \$500 million to rural carriers. As I mentioned in my opening statement, I have proposed \$1 billion for Puerto Rico and the Virgin Islands in particular, given some of the challenges they have had. And aside from those subsidy programs, we have reformed our rules to make it easier for small companies in particular to build out the infrastructure in rural America.

And the reason why it matters is because there are a lot of communities across this country that are simply on the wrong side of the digital divide. And the Scottsville example is a good one. I visited there a couple of weeks ago. Four thousand people in the town of Scottsville, not a single pediatrician in the entire county. And so, for a long time, the only option for a kid who got sick in school was to hope that the school nurse could help him or her. Well, now, thanks to a high-speed connection between Scottsville, Kentucky and the Vanderbilt University's Children's Hospital, they are able to engage in telemedicine. Kids are healthier. Parents do not have to take time off work. Teachers can focus on teaching. The community is healthier.

And that one anecdote, I think, illustrates the fact that this not an academic debate. Rural broadband, broadband deployment generally means getting human capital off the shelf and empowering Americans to be participants in—rather than spectators of—the digital economy.

Mr. GRAVES. Great. Thank you. Thanks for your vision there and the aggressive rollout. That is amazing. Mr. Quigley, you are recognized, and then Mr. Moolenaar.

Mr. QUIGLEY. Thank you, Mr. Chairman. Mr. Chairman, I respect you in the fact that I know you believe that those actions are important. And the chairman, I am sure, appreciates those kind words.

There are some times, though, when we disagree, and these issues matter. So, I have got to ask these questions. And it begins with: have you recused yourself or do you plan on recusing yourself from any further actions relating to the Sinclair-Tribune merger until the IG investigation has concluded?

Mr. PAI. Congressman, I have been advised by the Office of General Counsel that recusal is not required under the applicable rules and regulations.

Mr. QUIGLEY. Is this concerning and after and involved with the Inspector General's investigation?

Mr. PAI. My understanding is that the career ethics officials have given general advice with respect to my participation in that transaction.

Mr. QUIGLEY. Are we told how long the IG investigation will take place?

Mr. PAI. To my knowledge, they have not said anything publicly about the investigation. I have no knowledge of what their timeframe might be. I would refer you to the OIG for any answers.

Mr. QUIGLEY. Did representatives of Sinclair inform you or your staff about a proposed merger with Tribune before the FCC's vote to reinstate the UHF discount?

Mr. PAI. They did not. Absolutely not.

Mr. QUIGLEY. Was there any communication at all before or after, involving this merger?

Mr. PAI. About the merger?

Mr. QUIGLEY. Yes.

Mr. PAI. Before they announced it? No. Not at all.

Mr. QUIGLEY. Nothing whatsoever?

Mr. PAI. No. I have read about it, I think, in the press, as anybody else did.

Mr. QUIGLEY. Did President Trump or any other officials at the White House—the transition team—discuss Sinclair at all with you or any of your staff or people who would become your staff?

Mr. PAI. To my knowledge, sir, no. No one ever told me about a pending proceeding of any kind.

Mr. QUIGLEY. Before the inauguration as well?

Mr. PAI. No. No one.

Mr. QUIGLEY. After the inauguration?

Mr. PAI. When I met with the President-elect, no.

Mr. QUIGLEY. Did anyone ever talk to you from the White House, generally, about a proposed Sinclair-Tribune merger with you, your staff, anyone else related at all?

Mr. PAI. Not to my knowledge.

Mr. QUIGLEY. Has anyone from your staff talked to you about this—having told you that they talked with anyone at the White House or the administration?

Mr. PAI. Not that I recall. No.

Mr. QUIGLEY. Both before and after the announcement of the proposed Sinclair-Tribune merger, did any representatives of Sinclair discuss with you or your staff changes to the main studio rule or local media ownership rules?

Mr. PAI. I think a number of companies, including that one, have suggested over the years that the media ownership rules were in need of reform. That is a position I held well before I had those discussions.

Mr. QUIGLEY. But the discussions that Sinclair had, were those with you?

Mr. PAI. When the——

Mr. QUIGLEY. You said that they and others have.

Mr. PAI. Right.

Mr. QUIGLEY. When did Sinclair have these discussions with you?

Mr. PAI. Oh, so, for example: I cannot recall the specific date, but I mean, I am aware generally that the media ownership rules are outdated; there is a need for reform there, and that is consistent with the views I have long-held.

Mr. QUIGLEY. But when did Sinclair specifically talk to you about this?

Mr. PAI. Well, I do recall—I think it was in 2016, for example—that I made a presentation to the general managers of some of the Sinclair stations. And one of the points I made was that media ownership rules were in need of reform. And I think there might have been a couple of questions from some of the general managers about that.

Mr. QUIGLEY. Do you have a record at all of any meetings and correspondence that you or your staff have had with representatives of Sinclair, including lobbyists and lawyers representing Sinclair, since November 6th, 2016?

Mr. PAI. If we have any such correspondence, it has been produced, I understand, in response to FOIA requests.

Mr. QUIGLEY. In response to FOIA requests from?

Mr. PAI. From individuals who have requested information. In addition, my understanding is we supplied some documents to some of your colleagues on the House Energy and Commerce Committee as well.

Mr. QUIGLEY. And are those request up-to-date?

Mr. PAI. As far as I know, yes.

Mr. QUIGLEY. And can you provide us with a summary of those meetings and copies of that correspondence as well?

Mr. PAI. I will take a look at what we have and we would be happy to work with you on that.

Mr. QUIGLEY. Now, press reports indicate that the DC Circuit Court has expressed skepticism about the FCC's authority to reinstate the UHF discount. You are aware of this? So, let me ask you: what happens if the FCC approves a Sinclair-Tribune merger, which would be unlawful if not for the UHF discount reinstatement, and then the court rules against it? Will the FCC undo the merger? Can it? Either way, does not it make sense to you, sir, that we wait until the court rules on your authority before acting on the merger?

Mr. PAI. Well, Congressman, you are talking about two clashing hypotheticals. One is what the court might do.

Mr. QUIGLEY. It is a big deal, though.

Mr. PAI. Oh, I understand that. But you are talking about two clashing hypotheticals. One is what the DC Circuit might do, and two is how the FCC might evaluate the company's newly issued proposal, which, as you point out in your opening statement, was just submitted a couple of days ago. The clock on that transaction has been stopped since January. And so, I am loath, at this point, to forecast what we might do in the event of either of the hypotheticals.

Mr. QUIGLEY. Could you forecast the timeframe before you would approve a merger?

Mr. PAI. I cannot Congressman, because the clock is currently stopped. And as you pointed out, just a couple of days ago, they submitted this proposal, which we have not had a chance to fully evaluate.

Mr. QUIGLEY. And I will get into it in a later question, but given the magnitude of the court's decision, does it not make sense to put off a final decision until they rule? Hypothetical or not, given the fact that you would be making this decision and then the courts would be ruling against it probably shortly thereafter.

Mr. PAI. Congressman, we will take that factor into account. But again, I do not want to forecast or give a specific timeframe, given the fact that the clock is currently stopped and we have not had a chance to fully evaluate the new proposal.

Mr. QUIGLEY. My time is up.

Mr. GRAVES. Thank you, Mr. Quigley. Mr. Moolenaar and then Mr. Bishop.

Mr. MOOLENAAR. Thank you, Mr. Chairman. Chairman Pai, thank you for being here with us today. And I wanted to follow-up on some of the questions Chairman Graves was asking about the rural broadband. And also, telemedicine is something you have been talking about. I just want to emphasize, in my district, which is 15 counties in Michigan, rural broadband is a huge priority, as well as the telemedicine opportunities. And I want to continue to encourage you in that direction.

If I am speaking to people in our district and leaders in different communities who are concerned about these things, what message should I be giving them right now, in terms of timing, the expectations they can have in this regard?

Mr. PAI. You can tell them that the FCC's number one priority is closing the digital divide, making sure that every part of this country is connected with internet access and other advanced technologies. Everyone wants internet access by yesterday. But nonetheless, we are moving very aggressively—the fixed broadband program starting in July, the mobile broadband auction starting in 2019. We are moving very aggressively, and we are also talking about the value of telemedicine in particular. We have teed up some reforms to our rural healthcare program to make sure that healthcare providers all across the country—but especially in places like your district—have the resources that are needed to make sure the consumers in your district can take advantage of healthcare opportunities that folks in bigger cities do. And this is

an issue I am really passionate about and we would be happy to work with you on it.

Mr. MOOLENAAR. Wonderful. Thank you. And then, every day, our office receives calls from constituents complaining about scam phone calls. It is more than a nuisance. Some of these calls pose as everything from IRS agents threatening to arrest people, hospitals claiming to need more money to assist a relative. Why does not the Do Not Call list filter these out, and what can the FCC do to address this problem?

Mr. PAI. The sad answer to your first question is that the scam artists do not respect the Do Not Call List. And so, then, it falls to the FCC as well to figure out ways to stop the supply, so to speak, of these unwanted robo-calls. And we have done that aggressively. For example, we took action last year to empower carriers to block spoof calls that are clearly from invalid or unassigned phone numbers.

And we have also engaged technologists and others to come up with a call authentication standard—a digital fingerprint, as you will—for each phone number. So, if you see a phone number on your phone, you will know that it is coming from a specific person who has specifically been assigned that number. We have also taken aggressive enforcement actions. The largest fines proposed in the agency's history have been proposed over the last year to go after these robo-callers.

And I personally have talked to my counterpart at the Federal Trade Commission and have spoken with foreign counterparts in places like India about the need for international cooperation. A lot of these scam calls come from abroad. Our jurisdiction does not extend, of course, beyond the U.S. border. We need their help. And I am glad to say that my counterparts, generally speaking, have been very supportive in doing that. This is an all hands on deck effort, and I am pleased to say that we are putting all hands on that deck.

Mr. MOOLENAAR. OK. Thank you. If I could change course for just a minute, I appreciate your working on cleaning up the waste, fraud, and abuse in different programs which you have authority over. And one of the concerns that has been raised to me is regarding the Lifeline program.

You know, I know, in my district, I believe there are almost 26,000 subscribers to Lifeline. There have been concerns raised about disruption based on a new proposal that you have on a reseller ban and some kind of a cost-sharing co-payer type program. And I just wondered if you have done some kind of a cost-benefit analysis on this that integrity, and make sure that, you know, we are— but I am hearing these concerns raised, and I just wondered if you could speak to that.

Mr. PAI. Thanks for the question, congressman. I have long said that every dollar in the Lifeline program, or any other program, that is wasted is a dollar that by definition is denied to a consumer who is in need. And that is why I have suggested that the FCC needs to prioritize consumers rather than the companies that are, you know, occasionally engaging in this waste, fraud, and abuse.

And so, that is part of the reason why, for example, we got rid of the port freeze, which essentially prevented Lifeline consumers

from changing providers for a year, preventing consumer choice. That is why we have made clear that the Lifeline program should support 3G or higher speeds, as opposed to premium WiFi, because some Lifeline consumers told us, "Well, we get these phones, but then we can only use them if we have WiFi, which we do not have at home."

That is part of the reason why we are taking steps to make sure that we, as you pointed out, maintain program integrity. We do not want companies, for example, to get multiple duplicate subscribers—

Mr. MOOLENAAR. Is there some evidence of that kind of fraud taking place?

Mr. PAI. There is. For example, in Michigan we uncovered a case in which one company was getting subsidies for 22,000 subscribers per month. Those subscribers did not exist. And that is the kind of thing, again, every dollar that goes to somebody who does not exist or is not in need, it cannot go to somebody in your district who really does need to help.

Mr. MOOLENAAR. Thank you. Thank you, Mr. Chairman.

Mr. GRAVES. Thank you, Mr. Moolenaar. Mr. Bishop and then Mr. Yoder.

Mr. BISHOP. Thank you very much, Mr. Chairman. Again, Chairman Pai, I would like to welcome you. First off, though, I would like to take this opportunity to talk about Commissioner Mignon Clyburn and her legacy on the Commission. I would like to say that Commissioner Clyburn has really been an asset to the FCC and that she has done great work in advocating for the American people, particularly those who are in greatest need of government protection and assistance. She has been a consistent and a powerful voice on the commission, and her impending departure will be a great loss for everyone.

It would be unfair to compare anybody's work to hers, but to that point, I want to know your thoughts on some of the aspects of the issues for which she was such a tireless champion. You have consistently opposed the notion that the FCC has the authority to determine rate caps for intrastate prison calls, which is essential for the rehabilitation of inmates by allowing them to feel connected to their families and their communities. What do you think that the FCC can do to mitigate the predatory practices of the companies charging excessive rates for inmates? And will you act on, in any way, on what you think the FCC can do?

Let me just also say that Commissioner Clyburn was an advocate for enhanced accessibility for communications for individuals with disabilities. Tell us what the plans that the FCC has and what your thoughts are, in particular, to ensure that these individuals with disabilities are not left behind with regard to the rapid and ongoing communication advances.

And I would like to go back to the Lifeline question, which is so very, very important. It assists low-income individuals with acquiring telecommunications services, which goes to the heart of the purpose of the Universal Service Fund. But the proposed ban on Lifeline Wireless resellers—which is a primary source of service for Lifeline customers—accounts for up to 8 million current customers. And the ban is predicated on a GAO report that found that 5,500

duplicate Lifeline recipients and 6,300 deceased individuals, who are receiving subsidies at a fraud of 0.16 percent. That is 0.16 percent, and 0.18 percent respectively.

Overall, the improper payment rate for life is well below the government-wide average of 4.67 percent. And it outperforms many of the other popular government programs. So, would you just comment on the justification for such a drastic response to the situation and what the FCC plans to do to accommodate the millions of people who stand to be disconnected because of loss of the subsidy?

Mr. PAI. Thank you, congressman. You have teed up a few questions. So, I will try to get to them in sequence. First, with respect to Commissioner Clyburn, I could not agree more. She has been a champion of the public interest during her time at the Commission. In fact, with the committee's indulgence, I would like to introduce into the record a joint op-ed that she and I did, perhaps her last of the Commission, in which we talked about the power of broadband to help rural cancer patients get access to the treatment they need. She and I worked together to forge an agreement between the FCC and the National Cancer Institute, and I think it is part of her legacy that she is promoting telemedicine and connected health as something that will help all Americans.

Additionally, with respect to intrastate inmate calling rates, I have consistently said that, unfortunately, the plain language of the Communications Act gives the FCC jurisdiction over interstate rates, but intrastate rates are a different question. And unfortunately, the DC Circuit agreed with that interpretation. I understand that there is legislation in Congress to reform that system. We would be happy to work with you as well as members of the Senate who have expressed interest in that question.

On the interstate side—going back to 2013—I specifically proposed a 0.26 cent and 0.19 tiered structure that I thought was consistent with the evidence and would have withstood judicial review. Going forward, we are still evaluating the issue, but we would be happy to work with you on the path forward.

On disabilities, I could not agree with you more. One of the great benefits of technology, I think, is now bringing into the fold many millions of people who, in a previous analog area, might not have had the ability to participate in society. So, I am proud, for example, that we have really tried to push the availability of things like real-time text, allowing those with disabilities, for example, to text each other in real time instead of having to send an SMS, wait for a message, and get a message back with different reforms to the Telecommunications Relay Service and other programs, I think, we are going to bring more people disabilities into the connected era.

Last, with respect to Lifeline, I agree with you. I have consistently said that Lifeline is an important tool for addressing the digital divide. And we are still taking input on some of our proposals from the most recent notice of proposed rulemaking. I will simply state in the interim that we have recognized the importance of this. I personally visited the Navajo Nation recently, and I got to hear firsthand about the importance of Lifeline to some of the folks on Tribal lands. And that is why we extended the deadline, for example, for folks in the Tribal Nation, to be able to continue to enjoy

some of those benefits. So, these are very important issues that you have raised, and I look forward to working with you on that.

Mr. BISHOP. Thank you. My time is more than expired, but thank you very much.

Mr. PAI. I am sorry for the long answer.

Mr. GRAVES. Thank you, Mr. Bishop. Mr. Yoder and then Mr. Cartwright.

Mr. YODER. Thank you, Mr. Chairman. Chairman Pai, welcome to the committee, and welcome back, and welcome to the committee for the first as chairman of the FCC. I think you were here before, but maybe you were not actually fully confirmed.

But it is great to have a Kansan in this role. And as a fellow Kansan, I know that you are concerned about rural broadband. And the chairman has asked about it, as well as others today. And I want to ask you a little bit about the rural healthcare program. For the past 2 decades, the rural healthcare has remained at \$400 million per year. But in 2016 and 2017, demand for this program exceeded the cap, and the FCC has rightly proposed adjusting the cap for inflation.

However, in the meantime, the USAC—which administers the program—set the funding request for fiscal year 2017 were \$521 million, above the \$400 million cap. And since the cap has not been raised, the USAC administered retroactive cuts to the program participants. They culled back 15 percent from individual participants and 25 percent from those who participated as part of a consortium.

This concerns folks in Kansas because that method of calculating the cuts disproportionately affects Kansans where the majority of rural healthcare program participants are part of a statewide consortium. So, my first question is, why is the USAC moving forward with these clawbacks ahead of the rulemaking process that would raise the caps for 2017?

Mr. PAI. Good question, Congressman. So, based on the rules that are existence, USAC had to make those determinations. We have tried to work with them to ameliorate the impact of those. So, for example, once my office saw the trend lines—that demand was going to exceed supply in terms of the rural healthcare budget—we asked them to use fiscal year 2017 unused funds to mitigate the impact of that. And I recognize it is not fully mitigating it, but we did what we could, given the resources we had.

Moving forward, in December of 2017, we also took steps to give healthcare providers relief by teeing up, as you pointed out, a notice of proposed rulemaking to say, prospectively, should we revisit what that cap is, recognizing that there have been resource constraints in the past. And so, I hope that the combination of those two things will help.

With respect to individual applicants for this consortia, this is an important issue. Our thinking was that individual healthcare provider facilities do not have the economies of scale, the bargaining powers that a larger group, a consortium, might have. Additionally, it might be difficult to discern which members of a consortia are urban versus rural. This is, of course, the rural healthcare program. And so, that was part of the rationale there. But we recognized that there are important services that the consortia provided

as well. And so, we hoped that it would consider the notice of proposed rulemaking. I believe the comment cycle just recently closed. We will take that into account.

Mr. YODER. Well, I know, whether it is 15 percent for individuals or 25 percent for the consortium, those clawbacks are difficult to sustain and impactful. And so, the rulemaking, obviously, will fix this, hopefully, going forward, by raising those caps. Where is that process? Where are we in that timeline?

Mr. PAI. The comment cycle recently closed. Our staff is evaluating the comments we have received. And we hope to make a judgment at some point in the near future. I recognize, having been to, you know, the KU Med Center in your district, I understand some of the great things they are doing. And we want to keep promoting that in the time to come.

Mr. YODER. OK. Last September, Representative Mark Takano and I, as co-chairs of the Congressional Deaf Caucus, sent you a letter regarding a petition for rulemaking—we have spoken about this before—that was supported by organizations that advocate on behalf of the deaf and hard-hearing. The petition requested that the FCC promulgate regulations to change the contribution methodology for the Telecom Relay Service Fund. As you know, the TRS provides vital services to the deaf community, but a shrinking revenue base for the fund has threatened those services.

In our letter, we have voiced our hope that the FCC would prioritize this issue. And I thank you for responding to the letter, in which you stated that the Commission was working to conclude its review of this matter as quickly and as equitably as possible. I would like to get an update on where you are in this situation, where we stand on the issue. And I understand that you have been working on a Telecom Relay Service draft notice of proposed rulemaking. Can you give us the timeline when you expect that it will be issued and out for public comment?

Mr. PAI. Sure. First and foremost, thanks to you and Congressman Takano for your interest in this matter. And second, I meant what I said in my response, and I am pleased to report this morning—or this afternoon, rather—that in the next couple of weeks, we hope to circulate that notice of proposed rulemaking. Hopefully soon thereafter, my fellow commissioners will vote on it and we will be able to hit the ground running with that proceeding.

Mr. YODER. Great. Thank you for your work there. That means a lot to a lot of our constituents who are deaf and hard of hearing. And we appreciate your leadership on that. And then, lastly, on the repack issue. You know, in fiscal year 2018, we included \$50 million to cover reimbursable expenses of radio broadcasters that are impacted by the TV incentive auto repack. There has been some concerns that radio broadcasters facing these costs in the earlier phase of the repack lack the information they need to adequately plan for the mitigation efforts to ensure minimal impact to radio listeners.

Can you give us a quick update on the rulemaking? And can the FCC include the update of its work on the radio repack rulemaking in their monthly reports to the committee?

Mr. PAI. Sure. So, with respect to the first, we have asked the staff who are working on the incentive auctions, including folks in

the media bureau, to take a look at the recent legislation and to figure out what steps need to be taken to implement that instruction. At this time, I do not have a specific timeframe that I can give you. But I can tell you that they are working as quickly as they can to make sure that FM stations have the certainty they need and that Congress gets the information it needs promptly.

Mr. YODER. Quickly and equitably as possible, as you say, on everything.

Mr. PAI. Absolutely.

Mr. YODER. I appreciate it. Thank you.

Mr. GRAVES. Mr. Cartwright and then Mr. Young.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. And Chairman Pai, thank you for being here.

Mr. PAI. Thanks.

Mr. CARTWRIGHT. And I want to talk more about rural broadband. One thing that we agree on, on both sides of the aisle, is the importance of getting going on this, connecting our rural residents to the worldwide Web. Now, you mentioned the Connect America Fund. It spent about \$4.5 billion last year, attempting to expand coverage. And I certainly applaud those efforts. But I want to think the Commission could do more to promote innovation. And specifically, I am thinking of an exciting new technology that would use vacant television spectrum—or white space—to deliver broadband to rural areas.

And now, the real benefit of this model is that utilizing it could cut the cost of bridging the digital divide by about 80 percent, compared to fiber solutions alone. But nationwide deployment is impossible until the Commission sets aside sufficient TV white space spectrum for wireless unlicensed use in every market across the country. What do you think of this? Why has this step not been taken? And can you provide a timeline of when we might expect the Commission to act on TV white space?

Mr. PAI. Thanks for the question, congressman. And I am pleased to see that we have common ground on that issue. It is very important, as I know, in Kansas as it is in Pennsylvania. With respect to that issue, I have met with Microsoft and some of the other entities that are advocating for it. I have personally been to South Boston, Virginia, a small town, where I got to meet Dylan Harris, who at the time was a high school student. He is now a student at Old Dominion University. And he told me that he had internet access because of this kind of technology and it helped him do his homework in a way he could not before.

Now, I also have to say, though, that we have a low-power TV displacement window that is currently open in connection with the incentive auction. That window closes, I believe, on June 1st. And so, it is premature for me to give you a specific timeframe on when the Commission might reach resolution, because we do not know what the quantum of LPTV entities might be that might also be looking for the use of that spectrum.

We would be happy to keep you posted as soon as that window closes and we get more information. Believe me, when it comes to rural broadband, I understand that time is not on the side of those folks in Easton, or in Parsons, Kansas, where I am from. But we want to make sure we do everything we can as quickly as we can.

Mr. CARTWRIGHT. Thank you for that. And I will ask that you keep us posted.

Mr. PAI. Happy to do it.

The FCC provides updates on all incentive Auctions Actions to HAC and SAC on the 23rd day of each month, as per the FY18 Explanatory Statement.

Mr. CARTWRIGHT. Secondly, Congress recently made what some have called a down payment on investing in rural infrastructure by adopting a \$600 million rural broadband loan/grant pilot program, to be administered by the USDA Rural Utilities Service.

Now, with all the work on broadband network currently underway, pursuant to USF reforms—Universal Service Fund reforms—made by the FCC, how do we ensure that these additional infrastructure resources are coordinated with assisting programs to prevent duplication of effort and waste of money?

Mr. PAI. That is a great question. And we want to make sure that every dollar stretches as far as it can. And that includes not duplicating effort. So, we have worked with the U.S. Department of Agriculture. I have personally spoken to Secretary Perdue several times over the last year. And I was just at the Ag Department a week ago to talk about the fact that we need to coordinate. I have asked our Wireline Competition Bureau—and I think they already have reached out to the U.S. Department of Agriculture staff—to make sure that we can combine forces. And I have also set up meetings with the Rural Utilities Service administrator, who works at the Ag Department, of course, to make sure that we are on the same page.

We want Congress to be able to tell its constituents, the dollars we allocated in the omnibus are going to go towards unserved parts of the country, and there is not going to be a single wasted effort or dollar.

Mr. CARTWRIGHT. Now, specifically—not to put too fine a point on it—are you at all concerned that the new infrastructure funding might overbuild existing USF-supported networks or even duplicate construction efforts underway through the CAF-II and other programs to deploy networks?

Mr. PAI. I am not at this point. Again, the Ag Department is in the early stages. They are thinking about how to structure this program. But one of the things that have suggested to me, and I think the clear direction from Congress as well, is that we need to work together to make sure that we do not encounter that possibility.

Mr. CARTWRIGHT. OK. And now, the omnibus spending bill also included some permitting reforms to speed up the process of securing easements and rights of way across Federal lands. Now, that your Broadband Deployment Advisory Committee—BDAC—had produced some recommendations on these issues, what do you see as next steps, and what changes would you prioritize?

Mr. PAI. The Advisory Committee just came out with a few recommendations on State and local model codes, for instance. And they have identified some other barriers to infrastructure investment. And again, I am very grateful to Congress for addressing the Federal lands issue as well.

On average, it takes twice as long to deploy broadband on Federal lands as it does on privately-held land. That is a huge barrier in some cases, especially out West. We are looking forward to mov-

ing forward as quickly as we can on some of those recommendations and instructions from Congress. And hereto, I would be happy to keep you posted. We have been having a lot of balls in the air between the auctions and the regulatory reforms, but we are committed to solving those problems as soon as we can.

Mr. CARTWRIGHT. Thank you, Chairman Pai. Back to you, Mr. Chairman.

Mr. PAI. Thank you.

Mr. GRAVES. Thank you, Mr. Cartwright. Mr. Young? And then, Ranking Member Quigley.

Mr. YOUNG. Thank you, Mr. Chairman. Hello, Mr. Chairman.

Mr. PAI. Hello.

Mr. YOUNG. Nice to see you.

Mr. PAI. You too.

Mr. YOUNG. Good to be with you. This past February, President Trump signed into law a bipartisan bill—a bill I introduced—called the Improving Rural Call Quality and Reliability Act. This is an issue that is pretty prevalent in rural areas where calls are just dropped, or they are not even connected, when they are rerouted through rural America.

Recently, your commission dropped reporting requirements of originating providers that helps identify the rates of call completion problems. Can you explain to me how the Commission will ensure that rural public safety, hazards, businesses, families, customers, services are not compromised in the absence of these reporting requirements?

Mr. PAI. Thanks for the question, congressman. First, congratulations on the passage of that important legislation. It is something that I have heard firsthand, including on the ground in Spencer, Iowa, where I heard from the local municipal utility how this was a problem that their consumers typically blame them for, as opposed to the company that started the call.

As per the FY18 Explanatory Statement, on June 23rd, the FCC submitted to the HAC and SAC a Rural Call Completion Report.

With respect to your question, we have taken steps to make sure that covered providers—that is, the entity that selects the long-distance provider who will carry the call—that they monitor the performance of those intermediate providers and take remedial steps, if necessary, to correct any problems they have. We do not want to see the problems we saw in the past, with respect to least-cost routing, where people would just pick the cheapest possible route without respect to call quality.

Now, secondly, we have already asked our staff to take a look at the rural call completion legislation that you just passed and to make sure that we move with all deliberate speed to implement it, because we recognize that for too many rural consumers and businesses, those calls are dropping too often and we do not want that to happen.

Mr. YOUNG. Well, those quality assurances need to be there, and there needs to be some accountability, because folks in the rural areas should have just as good coverage and service as folks in urban areas, especially when it comes to trying to make sure that our rural economy is moving as fast and hard as in can. Businesses have to be able to communicate with one another in emergency

services, families just wanting to talk to one another. So, thank you, and we will continue to work on you with that.

I am on the Agriculture Subcommittee as well on this Appropriations Committee. And we have got the USDA's RUS—Rural Utility Service. Are they the best entity or are you the best entity to deal with helping to employ broadband out into rural America or anywhere else? And are you doing something in the same light, and do we have two different departments doing the same thing? Is it duplicative? Are you talking to one another? Is this the best use of the taxpayer dollars?

Mr. PAI. That is a great question. And obviously, Congress holds in its hands the authority to make any necessary changes that it thinks are appropriate. We do work with them extensively. As I said, I have recently met with the Rural Utilities Service administrator. I am going to be sitting down with him for a more detailed discussion.

As to whether it makes sense to have multiple agencies doing the same thing, I tend to think that our agency would take the lead on that, given the fact that we have established mechanisms for distributing universal service funding. We are the technical experts when it comes to the networks themselves. But nonetheless, we are working very well, collaboratively, with other agencies, including the RUS, to make sure that we are all on the same page here; we are not duplicating effort.

Mr. YOUNG. Well, I hope it is not duplicative, because there are plenty of holes out there that needs filled if you are, because there is so many underserved areas, let alone unserved areas as well. So, please coordinate in a transparent, accountable fashion between one another, and give taxpayers the best bang for their buck on this.

Mr. PAI. Absolutely.

Mr. YOUNG. We had a hearing, as well, this morning, on the Transportation, Housing, Urban Development Subcommittee. And we talked about artificial intelligence, autonomous vehicles. Does the FCC have any role when it comes to our transportation systems and making sure you are working with the systems, that everybody is talking to one another, that there is going to be safety in the end, and vehicles are talking to one another? And wherever this goes, how do we ensure that space is available for the communications to make this all work?

Mr. PAI. Absolutely. As cars become internet-connected vehicles—we are a long way from 1980 Caprice Classic with red velour trim—

Mr. YOUNG. That is a classic.

Mr. PAI. It was for the short time it lasted. But we are working collaboratively with other agencies: for example, the Department of Transportation. And also internally, we are talking about the spectrum needs of industries like the automotive industries. We have been looking at a number of different bands.

Early on in my administration, we extended 4 gigahertz from, I believe it was 77 to 81 gigahertz—to talk about vehicular radars—since, you know, obviously being able to see, so to speak, around you is very important in a connected environment. So, more and

more often, I think, our agencies are converging because these industries are converging.

Mr. YOUNG. I appreciate that and pleased to engage with that. And let us know in Congress. We need to know regarding that to make this all work. I want to thank you for being here today. And we will be in touch with you and your commission regarding the rural call quality bill that was passed into law, make sure that works for everybody. I yield back, Mr. Chairman. Thank you. Thank you.

Mr. PAI. You bet.

Mr. GRAVES. Thank you, Mr. Young. You are a champion for rural America each and every time.

Mr. YOUNG. Can you say that again?

Mr. GRAVES. Always the champion down there. Ranking Member Quigley, you are recognized, and Mr. Yoder.

Mr. QUIGLEY. Thanks again, Mr. Chairman. Mr. Chairman, you know the history. There is a reason that Congress created a statutory cap so that a single large national corporation cannot own so many stations that it can control the voices reaching more than 39 percent of all U.S. households. We had the UHF discount, as we talked about, at the time.

But you and your own statements, in your mission, you eliminate these media outlets. One of the first acts as chair was to put the rule back in place. And I think you talked that this is a rule that should be in the dustbin of history. But now it is back in place. I am concerned that the FCC resurrected this antique loophole just to pave the way for more consolidation of companies like Sinclair. Can you tell us, is there any technical justification, as far as signal strength or reach, that the FCC relied on when you reinstated the UHF discount loophole?

Mr. PAI. Congressman, my position on this issue has been clear from the beginning. Going back to the previous administration, I consistently said that the UHF discount and the national cap went in tandem. And to the extent that if you got rid of one, one had to consider changes to the other.

In fact, the previous majority—if you go to the 2016 order—they explicitly said that the FCC had the authority to adjust the national cap. My position has been now, and has always been, that we need to consider the two things in tandem. I do not take a prejudged view about what the FCC's authority should be or how it should exercise that authority. All I am simply saying is that that tandem approach is one that I believe Congress had in mind.

Mr. QUIGLEY. But when you first talked about it, it was not in tandem. You said the UHF discount should be relegated to the history books. It was put in place for technical reasons.

Mr. PAI. Correct.

Mr. QUIGLEY. Because the UHF strength was different back then. All technology has changed.

Mr. PAI. Correct.

Mr. QUIGLEY. So, the reason the rule was put in place was not in tandem with something else. It had to do with technology. When technology changed, how does that stay in tandem with anything?

Mr. PAI. Because to the extent that getting rid of the discount, while technologically justified, would nevertheless have a major impact on the national cap, my point was simply—

Mr. QUIGLEY. Well, we had that cap. But we put the law in place for policy reasons. We did not want some corporate giant to have control over more than 39 percent. There was an exception because of signal strength. Once that changed, how do we not go back to the original concern?

Mr. PAI. But, congressman, that is exactly why I said we need to tee this up, which we did in a notice of proposed rulemaking. I am one of the few at the Commission who has been consistent—in the past administration and this one—in saying, number one, that the UHF discount, the technological foundation has changed, and number two, that the FCC may have authority here to adjust the national cap.

And so, all we are doing is teeing up the question for public input, but I have not said one way or the other what the ultimate resolution should be. That is precisely why we are engaged in this notice of proposed rulemaking.

Mr. QUIGLEY. One of your first acts as chair was to put the rule back in place.

Mr. PAI. Correct.

Mr. QUIGLEY. Because?

Mr. PAI. Because, again, as I have long said going back to the previous administration, a change the UHF discount implicates a change in the national cap. And as the previous administration found—not just me; the previous FCC majority—they determined that the FCC had the authority to adjust the national cap. And my point in my 2016 dissent was the Commission could not do one without considering changes to the other, which it explicitly agreed that it could do, if it wanted to.

Mr. QUIGLEY. You have sufficiently convoluted what is simply a way to allow groups like Sinclair to get bigger. Mr. Chairman, I would like to introduce into the record a letter to the chairman from Senator Cochran. And this is signed by a significant number of his partners—not a particularly helpful answer, somewhat dismissive, at that—but it will indicate the consistency of the measure that I am talking about.

I still do not understand how the two are not distinct and that you have created, through the magic of rhetoric, the ability to differentiate that from reality. The fact of the matter is, we created this policy law in law for a reason. You have creatively found way around that and say, “We are going to do this for different reasons. But the only exception was for technology.” The technology goes back to the old rule and the rule should be in place, that stations should not be allowed to have more than 39 percent of U.S. households. If you approve Sinclair, what are they going to have?

Mr. PAI. Congressman, I respectfully disagree.

Mr. QUIGLEY. Seventy-two percent.

Mr. PAI. Then I would ask, why did Acting Chairwoman Clyburn bring up this notice of proposed rulemaking about the UHF discount and the national cap back in 2013? I mean, I have consistently been on the same page, here. The two go together, because getting rid of one implicates the level of the other.

Mr. QUIGLEY. If it was fit for the dustbin of history, then why is not it now?

Mr. PAI. That is exactly what we are teeing up, Congressman. That is the notice of proposed rulemaking. I mean, it would be easy to, you know, of course, for any agency, to simply say, "You know the Administrative Procedure Act? Who needs it? We will simply rule by fiat." That is not how we do business. We tee up our proposals. We get public input for those proposals.

Mr. QUIGLEY. What concerns do you have that Sinclair would have control over 72 percent of the Nation's market?

Mr. PAI. That is the one of the issues we have to look at.

Mr. QUIGLEY. Let me answer. What concerns would you have about that?

Mr. PAI. I cannot prejudge exactly where we are going to be.

Mr. QUIGLEY. All right, any station. What concerns would you have? What is your policy belief of a single entity controlling more than 39 percent of the U.S. households? At 72 percent, what concerns would you have?

Mr. PAI. They are both legal and policy questions that are hard to answer.

Mr. QUIGLEY. What concerns do you have?

Mr. PAI. With respect to policy, from sort of a quasi-antitrust perspective, one wants to make sure that you have a competitive marketplace. One does not want any entity to consummate a transaction the effect of which would be to harm or otherwise impede the public interest. From a legal perspective as well, there the question is—as we discussed earlier—we want to make sure that we are acting—

Mr. QUIGLEY. Should any entity have 72 percent?

Mr. PAI. That is what we have to decide.

Mr. QUIGLEY. In your mind.

Mr. PAI. I cannot—

Mr. QUIGLEY. You get to vote on it.

Mr. PAI. Exactly. That is part of the reason. We have not yet had a chance to—

Mr. QUIGLEY. Should any entity have 70 percent?

Mr. PAI. We have not had a chance to evaluate the record, congressman. They just submitted the revised proposal two days ago. I have not had a chance to—

Mr. QUIGLEY. You know the law that we passed that dealt with 39 percent. What is your belief right now? Should any entity have more than 39 percent?

Mr. PAI. I am not going to prejudge the outcome of a rulemaking proceeding which is still pending.

Mr. QUIGLEY. I am not talking about Sinclair. I am talking about any entity.

Mr. PAI. I am not either. I am talking about the general national—

Mr. QUIGLEY. Should anybody have that much control?

Mr. PAI. I am talking about the national cap—

Mr. QUIGLEY. Yes or no? Do you have a thought yourself?

Mr. PAI. I am not going to prejudge—

Mr. QUIGLEY. We put you in this spot for these reasons.

Mr. PAI. To judge the facts, and the facts are still coming in. We are still evaluating a pending notice of a proposed rulemaking. I cannot tell you in the fifth inning how the ninth inning is going to end.

Mr. QUIGLEY. You are talking about one case. I am talking—

Mr. PAI. No, I am talking about—

Mr. QUIGLEY [continuing]. The general sense of what is fair. You said there could be policy implications for this. What are they, and what is the magic number in your mind right now? Do you not have some sense of what is fair, what is right?

Mr. PAI. This is exactly the point of being a rulemaking agency. We do not say in the fifth inning where we are going to end up in the ninth inning.

Mr. QUIGLEY. You consider the laws that are in place now?

Mr. PAI. Of course. That is the guiding light of everything we do.

Mr. QUIGLEY. The law that is in place now says 39 percent.

Mr. PAI. That is one of the factors we have to consider. Why did the previous FCC majority say we have authority to increase that cap?

Mr. QUIGLEY. Mr. Chairman, I thank you for your indulgence and time.

Mr. GRAVES. Mr. Cartwright, any questions?

Mr. CARTWRIGHT. Not to beat a dead horse, Mr. Chairman. I would like to go back to rural broadband some more. Your agency—

Mr. PAI. I will not stop you.

Mr. CARTWRIGHT. Your agency recently adopted an order that put additional resources into the USF high-cost program that provides ongoing support for rural networks. And of course, this order was most welcome, as many members of Congress, particularly those of us that have rural areas, have weighed in on the high-cost budget, in recent years as small carriers have put off network investments in the face of steep cuts to support demanded by the hard cap on the program.

But if nothing further is done, some rural carriers will face significant cuts to support, starting again on July 1st, and other carriers still do not have the resources needed to accomplish what the cost model was designed to do. So, the first question there is, how do we ensure that the high-cost program is set up for success over the long term?

Mr. PAI. Well, that is a great question, congressman, and thank you for the kind words about that \$500 million plan we adopted. I had heard from a number of different carriers—on their turf, not in DC—that that budget control mechanism could have a serious impact, because these are multiyear investment decisions they have to make.

Going forward, in addition to that \$500 million we advanced to rate-of-return carriers, we also teed up the possibility of two different proposals. One is increasing the amount of money that is generally available to rate-of-return carriers. And number two, to see whether a further offer of model support might be something that would appeal to some of those rate-of-return carriers.

That might be something that gives them more stability, the ability to plan out “OK, for the next 10 years we would like to build out. We know for the next 10 years we are going to get X amount

of dollars from the FCC.” That is the kind of thing that hopefully would give them the certainty that they need to build out those networks.

Mr. CARTWRIGHT. OK. And to follow up, I am interested in your comments. What further changes are needed for both model and nonmodel programs?

Mr. PAI. Sir, could you repeat the question again?

Mr. CARTWRIGHT. What further changes are needed for both model and nonmodel programs?

Mr. PAI. Further changes? So, with respect to I guess nonmodel programs—legacy—that is one of the issues we have teed up in this notice of proposed rulemaking. With respect to the model programs, we are continuing to hear from a number of A-CAM carriers about some of the issues they are facing. You know, they, too, would like additional funding. That is part of what we did in the \$500 million program.

I would be happy to work with you on some of the things we are thinking about. It is very much in the weeds, of course, as you know, but overall, we want to make sure that either legacy or non-legacy carriers have certainty and have sufficient and predictable support, in part because that is what Congress has instructed us to do.

Mr. CARTWRIGHT. I want to talk about speeds for a moment. My understanding that is in most cases the high-cost program requires that recipients deploy 10/1 broadband in rural areas, and in some cases the target speeds are even lower. Do you think these speeds are sufficient for rural consumers and businesses? And are they reasonably comparable to what urban Americans enjoy on average?

Mr. PAI. I want every American, including rural Americans, to have access to the highest speeds possible, and that is part of the reason why, for example, in our Connect America fund it was important to me to support not just 10-megabit-per-second service, but also service at a much higher tier.

In fact, we structured it so that the higher speed you offer to rural Americans the more of an advantage you get in terms of the reverse auction. In fact, the highest advantage is given to those companies that want to provide gigabit broadband to rural Americans. That is something I hope puts them on just as level a playing field as anybody else.

Mr. CARTWRIGHT. Very good. Thank you, Mr. Chairman. I yield back, chairman.

Mr. PAI. Thank you.

Mr. GRAVES. Thank you, Mr. Cartwright. It is my understanding Mr. Young has no further questions. I have no further questions, and I believe Mr. Quigley has one follow-up on another issue.

Mr. QUIGLEY. Thank you, Mr. Chairman. So, I think I know how to get an answer today. I am going to pretend that I am in Iowa, in a rural area of beautiful Iowa, which I love. And I do not have internet connection because we have not gotten to all the issues that we want to on that. And I turn off Sinclair, because I do not want to hear a prepaid announcement from President Putin, because I have got a robocall, and it is a robocall for debt collection by the Federal Government. Now, I think I can get an answer.

We passed the bipartisan budget act of 2015 that addressed this issue. The FCC later conducted rulemaking to implement that law. And the majority of the Commission voted to adopt strong consumer safeguards to make sure consumers were not overwhelmed by unwanted calls, and they have to come off their porch, drinking lemonade in Iowa, to take that call. Those protections just needed a sign-off from OMB to go into effect when you took over as FCC chairman.

Despite the fact that these consumer protections were approved by a majority of the Commission, it appears, it seems, that you asked OMB to halt its review, stopping the protections from going into effect. Can you tell us what, if anything, happened in that regard?

Mr. PAI. Congressman, I am sorry, which regulations are we talking about? The TCPA?

Upon review, it was determined that this series of questions on pages 275–276 referred to rules governing federal debt collection calls and the TCPA. More specifically, Mr. Quigley was asking about the decision to withdraw the request for OMB approval of the Commission's 2016 Federal Debt Collection Rules (FDCRs) adopted for debts owed to or guaranteed by the Federal Government. The rules were adopted per the Bipartisan Budget Act of 2015, Pub. L. No. 114–74, 129 Stat., amending the TCPA.

The withdrawal decision referenced by Mr. Quigley was based on the existence of an outstanding petition for reconsideration alleging a lack of authority under the TCPA. On May 14, 2018, the FCC issued a public notice seeking comment on various outstanding TCPA issues including the issue referenced by Mr. Quigley. This matter remains pending.

The PN specifically included the following request for comments, referencing the FDCRs, the Great Lakes petition for reconsideration, and the related Broadnet Declaratory Ruling:

[W]e seek renewed comment on the pending petition for reconsideration of the 2016 Federal Debt Collection Rules, filed by Great Lakes Higher Education Corp. et al. Great Lakes asks the Commission to reconsider several aspects of the rules, including the applicability of the TCPA's limits on calls to reassigned wireless numbers. In light of the court's opinion on reassigned I numbers, we seek renewed comment on this and other issues raised by the petition.

We also seek comment on the interplay between the Broadnet decision and the Budget Act amendments—if a federal contractor is not a “person” for purposes of the TCPA (as the Commission held in Broadnet), would the rules adopted in the 2016 Federal Debt Collection Rules even apply to a federal contractor collecting a federal debt? Do persons who are not federal contractors collect federal debts? Or does the Budget Act amendment underlying the 2016 Federal Debt Collection Rules undermine the rationale of Broadnet?

Mr. QUIGLEY. The ones dealing with robocalls for Federal debt collection.

Mr. PAI. To be honest, I am trying to remember. Robocalls relating—if I could get back to you on that—

Mr. QUIGLEY. It was my lead-up to this question that threw you off.

Mr. PAI. Well, I did live for 3 years in Chicago, for what it is worth, so I also know—you know, on the South Side, so I know Chicago as well.

Mr. QUIGLEY. You still got robocalls from the Federal Government, and we were trying to address that.

Mr. PAI. I would be happy to get back to you on that. It is not coming to my mind immediately.

Mr. QUIGLEY. None of this rings a bell about the rulemaking that came and just needed a sign-off from OMB to go into effect? This is when you took over as FCC chairman.

Mr. PAI. Right.

Mr. QUIGLEY. How long ago was that, sir?

Mr. PAI. January 2017. The only 2015 rulemaking I remember relating to robocalls or TCPA was the 2015 order that was just struck by the DC Circuit.

Mr. QUIGLEY. Yes, but I am asking, did you have any communication in your recollection talking with OMB about reviewing that?

Mr. PAI. I personally do not, no.

Mr. QUIGLEY. You do not recall that?

Mr. PAI. No.

Mr. QUIGLEY. If you do not remember, could you review in your records what you—

Mr. PAI. Yes, I would be happy to do that.

Mr. QUIGLEY. OK. And if any other recollections on this—but you commit to go back and do everything in your power to make sure these protections are in place?

Mr. PAI. Sure. I mean, my vague recollection is that the rules were not strong enough, but I would happy to take a look at what it was.

Mr. QUIGLEY. And if you could get back to the committee as a whole and give them the best of your recollection what exactly took place. Because we would like these protections to be put in place, because when I am in my field of dreams I do not want to have to rush in the house and answer some annoying question from some Federal person trying to get money. Thank you so much for your cooperation. It has been great.

Mr. GRAVES. Thank you, Mr. Quigley. Chairman, thank you for joining us today. I know there have been some pointed questions. But I want to thank you for your service. I know you have served in the minority capacity on the Commission; you are serving in the majority now. You have been under multiple administrations. You have been consistent in your viewpoints, very open, very transparent, and you are continuing that process.

And I know I speak on behalf of the full subcommittee here that your family has endured threats that they should never have to endure. And so, we thank you for your service, because we know it has not come without sacrifice for you, your wife, and your children. But we do dearly thank you, though, for joining us today, for your consistency, and for always being willing to come before this subcommittee and answer some tough questions regardless of the subject matter. Thank you again. With that, this hearing is adjourned.

Mr. PAI. Thank you.

[Information submitted for inclusion in the record follows:]

Financial Services and General Government Subcommittee
Hearing on the Federal Communications Commission
for Chairman Ajit Pai

Questions for the Record Submitted by Congressman Young

Rural Telemedicine Broadband Service

Chairman Pai—it is good to see the FCC has opened a proceeding to consider long-term reforms to benefit the Rural Health Care program. These reforms contain a much-needed increase to the RHC’s funding cap—which has remained at \$400 million since the program’s inception. In regard to RHC funding applications, many rural health providers are concerned about the uncertainty surrounding the 2017 funding applications.

Question: How is the FCC promoting rural telemedicine broadband service to ensure health care providers do not see rate increases?

Response: The FCC’s Rural Health Care Program is an essential tool for promoting rural telemedicine. This program helps health care providers afford the connectivity they need to better serve patients. Unfortunately, in Funding Year 2016, demand for this funding began to exceed the Program’s spending cap. That is hardly a surprise when you consider the Program was established in 1997 during the days of dial-up, and its funding limit had never increased, not even for inflation.

I wanted to update this program to better reflect the needs of and advances in digital healthcare. So this summer, I proposed and the full FCC agreed to do just that. We increased the annual funding cap from \$400 million to \$571 million for Funding Year 2017. This reflects where the funding cap would have been if it had been adjusted for inflation from the beginning. Speaking of, we’re giving providers more certainty by adjusting the cap annually for inflation and allowing any unused funds from prior years to be carried forward to future years.

We’re also taking steps so this money is not just distributed, but distributed wisely. That’s why we’re aiming to end waste, fraud, and abuse in the Program. Each Program dollar that’s wasted is by definition a dollar that isn’t going to improve digital health. And unfortunately, some carriers have been treating the Program as a piggy bank to be raided and haven’t been complying with our rules. To date, we’ve made real progress in rooting out this abuse, including by taking enforcement actions, and we’re not going to let up until the problem is solved. America’s taxpayers and patients deserve nothing less.

Finally, this past August, the FCC launched an initiative to more fully realize the potential of digital health for low-income Americans. We’re considering a program to promote the use of broadband-enabled telehealth services among low-income families and veterans. Our thinking is that patients would benefit from services delivered directly in their homes—such as sensor-based remote monitoring—instead of just brick-and-mortar health care facilities. We’re looking at a proposed \$100 million budget for this so-called “Connected Care Pilot Program,” and we are seeking public input on how best to design it.

Question: What are your plans for funding beyond 2018?

Response: Going forward, the annual funding cap of \$571 million will be adjusted for inflation. Accordingly, the funding cap for funding year 2018 will be \$581 million.

Question: When will rural health care providers expect to receive a funding decision for 2017 applications?

Response: Delays in funding decisions for 2017 applications are due to service providers too often being unable to show program compliance. At this point, I am pleased to report that almost all 2017 applications have already received funding decisions.

Questions for the Record Submitted by Congressman Bishop

Prison Phone Calls

You have consistently opposed the notion that the FCC has authority to determine rate caps for intra-state prison calls, which is essential for the rehabilitation of inmates by allowing them to feel connected to their families and communities.

Question: What do you think the FCC can do to mitigate the predatory practices of companies charging excessive rates and will you act on your suggestions?

Response: Congress gave the Commission authority to regulate interstate rates in section 201 of the Communications Act, but prohibited the Commission from regulating intrastate rates—section 2 of the Act makes clear that “nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . intrastate communication service by wire or radio of any carrier.” The U.S. Court of Appeals for the D.C. Circuit has recognized the line Congress has drawn between interstate and intrastate communications and declined to uphold Commission attempts to regulate the latter.

I plan to continue working with my colleagues at the Commission, Congress, and stakeholders to address the problem of high inmate calling rates in a lawful manner, and build on those areas where the Commission has clear authority and can act consistent with the D.C. Circuit’s decision, such as capping interstate inmate calling services at just and reasonable levels and regulating ancillary fees that affect interstate inmate calling services calls. Should Congress give the Commission authority to regulate intrastate rates, we stand ready to implement that directive.

Coordination with USDA Rural Development

The US Department of Agriculture, through its Rural Development agency, spends a lot of effort and resources to help improve the economy and quality of life in rural America. This includes loans, grants, and loan guarantees for economic and infrastructure development and essential services such as housing and health care. Related to the objectives of the FCC, USDA Rural Development also supports the development of communications infrastructure through its Rural Utilities Service.

Question: What is the FCC doing to coordinate with USDA Rural Development, and specifically the Rural Utilities Service, to ensure that your efforts are complementary rather than duplicative and that resources are effectively targeting the populations that need it the most, namely rural households that do not have access to broadband?

Response: I agree that we must ensure that taxpayer dollars are devoted to connecting unserved areas. We welcome coordination with our federal partners and private sector entities to ensure we are not duplicating efforts, and we meet regularly with the Rural Utilities Service to address this issue. The leadership of the Commission’s Wireline Competition Bureau—the Bureau responsible for overseeing the Universal Service Fund—and the leadership of the Rural Utilities Service conduct periodic meetings, as do staff from each agency. Additionally, the Commission has shared information about funded areas and will continue to do so. Finally, the Bureau has filed a comment in Rural Utilities Service’s recent proceeding and provided broadband performance measurements requirements that the Commission has adopted for Connect America Fund recipients.

Rural Internet Access

The FY 2019 budget request references the FCC’s efforts to expand rural Internet access in a few places, but largely omits specific proposals or plans, with the exception of Mobility Fund Phase II and its stated goal of bringing wireless service access to rural Americans who currently do not have wireless service.

Question: Can you please discuss in more detail what the FCC is doing to bridge the digital divide between rural Americans and their urban counterparts?

Response: The Commission has been taking significant steps to bridge the rural-urban digital divide. In particular, the Commission is modernizing our regulations and reforming our federal subsidy programs.

First, we have modernized our rules to encourage companies to take the risks, raise the capital, and hire the crews to build high-speed networks in rural areas. For instance, we have made it easier for companies to transition away from maintaining the fading copper networks of yesterday and toward investing in more future-oriented network technologies like fiber—a key limitation in rural areas where capital is scarce. We are also taking action to make it easier and cheaper for providers to get access to utility poles and conduits. And the Commission has given the green light to potential new entrants that want to send a large number of satellites into low-Earth orbit to provide high-speed broadband. These new networks promise much faster and more reliable satellite broadband services and could help us reach the hardest-to-serve areas.

Second, we've reformed our federal subsidy program, known as the Universal Service Fund, to stretch scarce dollars as far as possible and encourage more cross-technology competition. For example, the Commission recently completed the Connect America Fund Phase II auction, which allocated approximately \$1.5 billion over the next decade for fixed broadband in unserved areas, awarding funds to fixed wireless companies, electric cooperatives, and others who have shown a willingness to deploy broadband infrastructure in hard-to-serve places. Because of the way we structured the auction, we saved \$3.5 billion and allowed non-traditional recipients to build out networks (with performance thresholds and accountability at the back end).

Other significant steps on the universal service front include providing \$500 million in additional funding earlier this year to assist small, rural carriers in expanding broadband deployment and seeking public input on the future steps we should take so that these carriers have sufficient resources to build out broadband. We also raised the cap in our Rural Health Care program by \$171 million a year and agreed to adjust the cap in future years to account for the impact of inflation. At our Open Meeting on August 2, we unanimously adopted a Notice of Inquiry to examine a \$100 million pilot program to expand telemedicine. These steps will enable more rural patients, specifically low-income Americans, to access telemedicine through high-speed broadband.

Question: Specifically, what is the FCC doing to ensure that rural Americans are getting access to quality, fast broadband speeds, rather than applying a band-aid of wireless access that offers relatively low speeds with very low monthly data caps?

Response: As detailed above, the Commission has been taking significant steps to expand broadband deployment in previously unserved parts of our country. Our recent Connect America Fund Phase II auction exemplifies how the Commission is ensuring that rural Americans receive high-quality broadband services. As a result of our auction, we expect providers to deploy services to 713,176 homes and small businesses in 45 states, with 99.75% at speeds of 25/3 Mbps or higher. And over half of locations should receive service of 100/20 Mbps or higher.

HBCU Outreach

The FCC requires a lot of technical and technological expertise in its everyday work due to the technical nature of its regulations. Additionally, FCC employees are well positioned at the intersection of technology and public policy and can have a large impact in both fields.

Question: Can you please detail for me the steps that the Commission has taken to encourage minority participation in higher education that leads to communications careers?

Response: During my tenure, the FCC's Office of Communications Business Opportunities (OCBO) has partnered with a number of organizations and educational institutions to encourage minority participation in communications fields. OCBO Director Sanford S. Williams, Esq., has teamed with outside experts, including Dr. Ronald Johnson, CEO of Solutions4Change, and former Rector of the Board of Visitors at

Virginia State University (an HBCU). Together, they have participated in numerous programs, including speaking to students about FCC diversity policy initiatives, career opportunities at both the FCC and in the private communications and broadband sectors. Additionally, Mr. Williams is the Chairman of the Manassas City School Board in Virginia and has used this position to directly speak to many students about the FCC and communications careers.

OCBO also works with the Multicultural Media, Telecom and Internet Council (MMTC), and OCBO staff has met with MMTC's student law interns interested in telecommunications policy. Most recently, on July 19, 2018, Mr. Williams spoke at MMTC's "Access to Capital and Telecom Policy Conference" and met with MMTC and several law students to discuss OCBO's role at the FCC and careers within the government and in the private sector generally.

On September 12, 2018, Mr. Williams spoke at the Congressional Black Caucus event "The Future of Work" hosted by Talab Karim's STEM4Us and attended by HBCU representatives. The discussion included the Honorable Bobby Scott from Virginia, and featured an informative discussion focused on: "Preparations for the workerless economy by boosting training in autonomous vehicles, artificial intelligence, cybersecurity, health informatics and drones."

In addition, Mr. Williams speaks annually at MMTC's events and other programs related to technology and communications. These events frequently focus on bolstering the participation of minority students in higher education and communications.

Similarly, Mr. Williams has addressed other groups, including the National Asian American Coalition and the National Diversity Council, on the importance of attracting minority students to media and communications careers.

OCBO holds conferences on supplier diversity, capitalization strategies, and recently-emerging technologies. On June 4, 2018, OCBO conducted a well-attended and very successful Supplier Diversity Conference at the FCC.

In addition, OCBO routinely invites organizations such as the Latinos in Information Sciences and Technology Association, the National Association of Latino Community Asset Builders, the Asian American Justice Center, the Urban League, the National Black, Hispanic, and Asian Chambers of Commerce, and many others to advise their memberships of OCBO events.

The Commission has also revived the Advisory Committee on Diversity and Digital Empowerment (ACDDE Committee). The Committee's first meeting was on September 25, 2017 and since then it has provided advice and recommendations to the Commission regarding how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities into the media, digital news and information, and audio and video programming industries.

ACDDE has met to consider policies and recommendations to ensure that disadvantaged communities receive the wide range of opportunities made possible by next-generation networks. This Committee has helped provide an effective means for stakeholders with interests in these areas to exchange ideas and developed recommendations to the FCC on media ownership and procurement opportunities, empowering communities to spur educational, economic, and civic development, and consumer access to digital technologies.

Question: Can you also please describe what steps the Commission has taken to encourage minority employment within the FCC?

Response: The Commission has developed a multi-faceted approach to encouraging minority employment within the FCC through its Office of Workplace Diversity (OWD) in concert with the Human Resources office. This approach is focused on both applicants and current employees, provides opportunities for enhanced intra-agency communication, and creates an optimal environment for successful mentoring, networking and personal engagement.

With regard to established professionals considering career advancement or career changes, the FCC staff is encouraged to attend a broad range of off-site organizational conferences to enhance workplace skillsets and explore new goals. For example, FCC representatives attended the Blacks in Government (BIG) National Training Institute in 2017 and 2018. FCC staff also attended the Diversity 4.0 Conference beginning on June 13, 2018 to promote the benefits of a career with the Commission.

Internally, the OWD sponsored two programs designed to educate staff on the SES hiring process. In the first program, three female SES employees summarized their career paths in a panel presentation. In the second program, FCC staff participated in a training session designed to review the Executive Core Qualifications (ECQ) requirements, and train students to draft their ECQs

In addition to providing training and development opportunities, the FCC has worked with its staff to organize three additional Employee Resource Groups (ERG) to foster equal opportunity and develop a diverse, inclusive workplace aligned with the Commission's organizational mission, values, and goals. By partnering with these groups (BIG, the Latino Group, Young Professionals and a Veterans Group), the FCC is creating unity and synergy between the groups, supervisors/managers and the union to better promote equal opportunity, diversity and inclusiveness.

With regard to students considering government and/or communications-based careers, FCC staff have attended local college and university career fairs, such as the Morgan State University Annual Career Day in Baltimore in October of 2018. We also developed and presented a video for use in places where we lacked funding for travel, featuring staff hired through the "Pathways Program." This government-wide program offers clear paths to Federal internships for students from high school through post-graduate school and to careers for recent graduates and provides meaningful training and career development opportunities for individuals who are at the beginning of their Federal service.

The FCC created an Honors Engineer Program, which targets recent college graduates with engineering degrees. And the FCC has a long-established Attorney Honors Program that targets recent law school graduates. The Commission also provides incentives to excel for existing employees in the engineering and economics areas through its Excellence in Engineering Award and Excellence in Economic Analysis Award.

Another way the FCC is encouraging minority hiring is by improving understanding and inclusiveness for minority groups, including persons with disabilities. During the past year, the OWD held six book discussions and five video presentations to promote diversity and inclusion. To improve diversity, understanding and inclusiveness within the FCC involving persons with disabilities, the FCC staff created a web-based disability sensitivity training module in which four former FCC Commissioners participated. Moreover, the FCC is using the Special Appointing authorities to hire persons with disabilities.

The FCC also revamped its Alternative Dispute Resolution (ADR) program in an effort to reduce the separation rates of minority groups. We expect this decision will have a positive effect on minority employment by reducing workplace conflict and improving communication. As part of this program, managers and supervisors attended training sessions to foster the ADR participation.

Overall, the Commission has established and institutionalized solid, holistic approaches to recruiting and retaining minority employees, and we will continue to ensure that the OWD receives the resources that it needs to create a diverse and productive workplace.

Lifeline

At the subcommittee hearing you spoke about actions the FCC had taken to provide Lifeline consumers greater choice such as addressing the "port freeze." 73% of Lifeline customers have chosen to receive their service from wireless resellers. Yet the Commission's proposed Lifeline rule would exclude resellers from the program.

Question: How is the proposed rule consistent with your previous efforts to expand consumer choices?

Response: I am committed to bridging the digital divide, and I believe the Lifeline program can help do just that. That is why the Commission adopted the *2017 Lifeline Reform Order*, which seeks to focus Lifeline support where it is most needed and incentivize investment in networks that enable 21st Century connectivity to all Americans. As you reference, the Order increased consumer choice by eliminating restrictions that barred Lifeline consumers from changing Lifeline providers for a year—a restriction that some unscrupulous wireless resellers had exploited to lock consumers into substandard service.

At the same time, I am deeply committed to ensuring that the Commission fulfills its obligation to be a responsible steward of the Universal Service Fund. It is critical to strengthen the Lifeline program's efficacy and integrity by reducing the waste, fraud, and abuse that has run rampant in this program for the better part of a decade. For example, the GAO discovered 1,234,929 Lifeline subscribers who apparently were not eligible to participate in the program as well as 6,378 individuals who apparently reenrolled after being reported as deceased. That limited sample alone constituted more than \$137 million in abuse each year. And the Office of the Inspector General has calculated the Lifeline program's improper payment rate to be 21.93%—representing up to \$336.39 million in annual waste, fraud, and abuse.

Wireless resellers have been the subject of the vast majority of Lifeline investigations for waste, fraud and abuse. Indeed, at our last open meeting, the Commission voted unanimously to propose a \$63 million forfeiture against a wireless reseller in the Lifeline program that apparently requested and received funding for tens of thousands of ineligible Lifeline customer accounts. The company's sales agents apparently created fake or duplicate accounts by using the names of deceased people; modifying the names, dates of birth, and Social Security Numbers of actual Lifeline subscribers; reusing the same proof-of-eligibility documents for multiple accounts; listing the same single-family home addresses for dozens of accounts; and using addresses where nobody actually lived. The company apparently claimed funding for thousands of customers who hadn't been using the service for months and thousands of others who had already switched to another Lifeline provider. Month after month, the company apparently sought funding for accounts that it knew were ineligible to receive Lifeline benefits. And in August 2016—after the company told the Commission that it had taken action to ensure compliance with our Lifeline rules—the company still appears to have claimed Lifeline funding for more than 42,000 ineligible accounts. Meanwhile, the owner apparently used the company's ill-gotten gains to buy luxury items like a private jet, a Ferrari convertible, and country club and yacht club memberships.

Waste, fraud, and abuse in this important program is intolerable, which is why the Commission sought comment on several proposals last year to reform the program and crack down on abuse. We are reviewing the record in the open rulemaking proceeding while also examining how the Lifeline program can support investment in high-quality broadband networks where they are needed most—in low-income urban communities, in rural areas, and on Tribal lands.

Question: The FCC's own Mobile Competition Report that has stated in the past that wireless resellers and mobile virtual network operators (MVNOs) compliment the offerings of facilities-based providers because the MVNO may have better access to some market segments than the host facilities-based service provider, and can better target specific market segments, such as low-income consumers.

If resellers have developed an expertise in targeting low-income market segment, then why is the Commission proposing to exclude them from the Lifeline program?

Response: As stated above, it is critical to strengthen the Lifeline program's efficacy and integrity by reducing the waste, fraud, and abuse that has run rampant in the program for the past several years. The Commission is considering several different options for reforming the program and ensuring that Lifeline funds are going to support low-income families and veterans, not unscrupulous companies or luxury items for their executives. We are reviewing the record in this open proceeding and have not reached a conclusion on this issue.

Question: I understand that the FCC is proposing a “maximum discount level,” or copayment requirement for Lifeline subscribers. What effect does the FCC anticipate requiring a copayment would have on already low Lifeline participation rates?

Response: The Commission is considering several different options for reforming the program and ensuring that Lifeline funds are going to support low-income families and veterans, not unscrupulous companies or luxury items for their executives. A maximum discount level is one option that would prevent unscrupulous companies from claiming non-existent subscribers and enrolling the deceased. We are reviewing the record in this open proceeding and have not reached a conclusion on this issue.

Universal Service Fund High Cost Program

The FCC recently adopted an order that put additional resources into the Universal Service Fund High Cost program, which provides ongoing support for rural networks. The order was welcome, as many members of Congress have weighed in on the High Cost budget in recent years because small carriers have put off network investments in the face of steep cuts to support demanded by the hard cap on the program. However, if nothing further is done, some rural carriers will face significant cuts to support starting again July 1, and other carriers still don’t have the resources needed to accomplish what the program was designed to do.

Question: How do we ensure that the High Cost program is set up for success over the long term?

Response: I’m glad you agree that our reforms in March of this year were a big win for rural communities that want high-speed Internet access and are served by rate-of-return carriers.

The Notice of Proposed Rulemaking accompanying that March order seeks comment on ways to improve and simplify the funding system so that rate-of-return carriers have predictable support and the right incentives to efficiently invest in broadband connectivity in the rural areas they serve. We’re also considering a second offer of model-based support to carriers, as well as how the legacy rate-of-return system might be improved. Like you, I believe it is a priority to ensure that small carriers can offer high-quality, affordable broadband to rural America. I look forward to working with my colleagues to put forward an order that would do just that by the end of the year.

Questions for the Record Submitted by Congressman Yoder

Lifeline Program

I am aware that the FCC is taking steps to combat issues with waste and fraud in the Lifeline Program, which provides discounted phone service to low-income individuals. As you know, fraudulent enrollment of deceased individuals has plagued the program for some time, and I am encouraged by steps the Commission has taken to reduce this problem. However, several other shortcomings with Lifeline still remain unresolved, like the verification process for ensuring that subsidy recipients meet proper income requirements. While the FCC has initiated some efforts to improve the verification mechanisms, there have been delays and the Lifeline problems remain unresolved.

Question: Chairman Pai, I believe that you and I share a desire to combat waste and fraudulent use of taxpayer dollars. Given this goal, can you please give an update on the FCC's efforts to reduce fraud in the Lifeline Program and estimated timeframes for proposed solutions? Can you specifically address the Lifeline National Eligibility Verifier? What other avenues for Lifeline reform are you pursuing?

Response: I am deeply committed to ensuring that the Commission fulfills its obligation to be a responsible steward of the Universal Service Fund. It is critical to strengthen the Lifeline program's efficacy and integrity by reducing the waste, fraud, and abuse that has run rampant in the program for the better part of a decade.

For example, at our last Commission meeting, we proposed a \$63 million forfeiture against a wireless reseller in the Lifeline program that apparently requested and received funding for tens of thousands of ineligible Lifeline customer accounts. The company's sales agents apparently created fake or duplicate accounts by using the names of deceased people; modifying the names, dates of birth, and Social Security Numbers of actual Lifeline subscribers; reusing the same proof-of-eligibility documents for multiple accounts; listing the same single-family home addresses for dozens of accounts; and using addresses where nobody actually lived. The company apparently claimed funding for thousands of customers who hadn't been using the service for months and thousands of others who had already switched to another Lifeline provider. Month after month, the company apparently sought funding for accounts that it knew were ineligible to receive Lifeline benefits. And in August 2016—after the company told the Commission that it had taken action to ensure compliance with our Lifeline rules—the company still appears to have claimed Lifeline funding for more than 42,000 ineligible accounts. Meanwhile, the owner apparently used the company's ill-gotten gains to buy luxury items like a private jet, a Ferrari convertible, and country club and yacht club memberships. This apparent fraud was and is completely unacceptable.

The Commission is also taken action to prevent unscrupulous companies from receiving federal funds in the first place. We have launched the National Verifier in 11 states and 1 territory, enabling service providers to begin optionally using the system to check consumer eligibility. Use of the National Verifier becomes mandatory in Colorado, Mississippi, Montana, New Mexico, Utah, and Wyoming effective November 2, 2018, with additional states to come on board early next year. And last year, the Commission proposed several options for incentivizing states to participate in the National Verifier program.

I also agree with you that the Commission must pursue other avenues for Lifeline reform. It simply isn't prudent to sit idly by when hundreds of millions of taxpayer dollars are at stake. To address this, in a *Notice of Proposed Rulemaking* last November, the Commission sought comment on a wide variety of measures to improve the administration of the Lifeline program—from re-empowering state commissions to police Lifeline carriers to partnering with the states to stand up the National Verifier, from improving program audits to adopting a self-enforcing budget. We are currently reviewing the record that has been compiled in response to the Notice to determine the best path forward.

Mobility Fund II

Chairman Pai, as the FCC moves ahead with the Mobility Fund II, I would like to inquire about the challenge process that has been established. I appreciate all time and effort the Commission has spent to develop a fair process. I would like to discuss with you the potential that certain aspects of the challenge process may necessitate giving parties more time than is currently envisioned.

Question: Would you support an extension to the deadline to give more communities and companies time to avail themselves of this process?

Response: I agree that the initial challenge window—150 days stretching from March 29 to August 27—may not have given all parties sufficient time to file challenges. That’s why after this hearing, the Commission agreed to extend the challenge window. With an additional 90 days (a new deadline of November 26), we afford all challengers including the Kansas Farm Bureau more time to ensure that funding is directed to where it is needed. Our decision should result in a more efficient allocation of support funds, while still advancing the overall auction process to a timely conclusion and completing the phase-down of duplicative support.

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